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ABSTRACT

The May, 1978 Congressional hearing on the implementation of P.L. 94-142, the Education for All Handicapped Children Act, includes remarks and statements by 19 witnesses (special education administrators, advocates, teachers, and government officials). Statements touch on such implementation issues as understaffing, compliance, funding problems, recommended amendments, child count, individualized education programs, parent surrogates, due process, and residential services. Among appended information is a complaint by the Maine Coalition for Children with Special Needs, Inc. (CL)

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EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1978

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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HEARING

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED

OF THE

COMMITTEE ON HUMAN RESOURCES

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

EXAMINATION OF THE IMPLEMENTATION OF THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975 (PUBLIC LAW 94-142)

MAY 13, 1978
PORTLAND, MAINE

Printed for the use of the Committee on Human Resources

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EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1978

SATURDAY, MAY 13, 1978

U.S. SENATE,
SUBCOMMITTEE ON THE HANDICAPPED
OF THE COMMITTEE ON HUMAN RESOURCES,
Portland, Maine.

The subcommittee met, pursuant to notice, at 10 a.m., in the Portland Regional Vocational Technical Center, 196 Allen Avenue, Portland, Maine, Senator William D. Hathaway, presiding pro tempore.

Present: Senator Hathaway.

OPENING STATEMENT OF SENATOR HATHAWAY

Senator HATHAWAY. I would like to welcome all of you to the hearing of the Senate Subcommittee on the Handicapped of the Human Resources Committee.

I appreciate this opportunity which Jennings Randolph, who is chairman of the subcommittee, has provided by agreeing to hold this hearing today in Maine. Unfortunately, Senator Randolph could not be here.

The subject of this morning's hearing is, as you know, Public Law 94-142, the Education for All Handicapped Children Act. We will hear today from a variety of experts in the field, those people involved in working with handicapped children and working toward implementing this law.

We hope to learn more about how this law has impacted handicapped children themselves, as well as the institutions which seek to educate them.

Among those testifying are representatives of the public school system which, of course, contains a heterogeneous group of students, as well as representatives of State and private agencies and institutions, whose singular focus is the handicapped child.

Public Law 94-142 was enacted in November of 1975, and became operational during the 1977-1978 school year. The primary goal of this legislation is to, as the preamble states:

> Provide free, appropriate educational opportunities for all handicapped individuals requiring special educational services.

The law further requires the least restrictive environment, and this can be broadly interpreted to mean full- or part-time education in a regular classroom setting, a specialized program, or even a private facility that can provide services which public schools are not able to provide.

I am hopeful that the hearing will shed further light on the issues that need to be addressed in the process of implementing this important piece of legislation. It is a difficult task, but one which will mean much to the children who suffer from some form of impairment. It means a free, appropriate public education and the opportunity to live life as normally as possible.

This law cannot instantly create an educational Utopia for the handicapped, but it can, however, be an important tool for educators and parents and for all those concerned with the rights of the handicapped.

Hopefully, it will facilitate the process of reversing the long history of neglect and ignorance with respect to the legitimate rights of the handicapped.

We need the benefit of your knowledge, the long experience many of you have had in your work with the handicapped, as well as your expertise in analyzing the changes and new demands of the societal and educational structure, testing proficiency, and medical knowledge.

I look forward to hearing from all of you who are here to share your concerns about the law, the problems you have had in interpretation or in implementation, or areas of need that we have not as yet met.

Before we begin, I would like to urge each witness to summarize his or her testimony. All of the testimony and the complete statements will be placed in the record, as well as supporting documents, and if we could spend time discussing the issues, I think our time would be better spent than just reading lengthy statements.

Now, in addition to that, the subcommittee welcomes prepared statements for inclusion in the hearing record from individuals or groups who are not represented among the witnesses appearing here today. And I can assure you that those submitting statements, their views will be considered carefully in developing any policies on these issues, and the hearing record will remain open for 15 days after today, for that purpose.

Finally, I want to take this opportunity to thank all of you who took time to come here on a Saturday morning, when you could be sleeping or playing golf, to participate in these hearings.

We welcome your input into the legislative process, and we hope that we can benefit from the criticisms and suggestions that you can make of this law. One of the shortcomings, I think, of the whole legislative process is that we do not get as much input as we should. We do not really have the time to devote as much time as we should to oversight of the legislation that we have enacted, and I am glad to have this opportunity to do just that.

The first witness we have this morning is Mrs. Barbara Reidman, chairperson, Portland School Committee.

STATEMENT OF BARBARA REIDMAN, CHAIRPERSON, PORTLAND SCHOOL COMMITTEE, ACCOMPANIED BY DR. SHLOMO I. COHEN, PH. D., DIRECTOR OF SPECIAL EDUCATION

Mrs. REIDMAN. Thank you, Senator Hathaway, for the opportunity on behalf of the Portland School Committee, to enter our testimony.

The passage of Public Law 94–142 has placed the U.S. Congress squarely on record in support of the individual programs for children in need of special education.

The act requires that extensive efforts be made to locate children in need of special education—that is, Project Childfind—and to identify the nature of their educational needs.

Under provisions of the law, free appropriate public education must be provided in the least restrictive setting for every child. This language is summed up in the concept of mainstreaming.

In addition, related services must be provided free of charge including recreation, speech therapy, occupational therapy, and such other related services as may be a part of the individualized education program, commonly known as the IEP.

Further, we see the law requiring an evaluation by a multidisciplinary team of professionals after parental consent. When the IEP has been completed, it must receive parental consent before implementation. The school and the parents then become partners in the process and the product of the individualized program.

We believe the law is sound because it provides opportunities for children who have not always received proper attention from our schools.

It includes due process procedures, and it involves parents, most importantly. It also establishes a way of looking at educational programs based on capital assessment of the individual student's needs.

The law requires that the IEP must be evaluated annually. It may in fact have the effect of reforming public education, because if students receive special education services based on individually prescribed education programs, then parents of children who do not have special needs may eventually demand the same process to develop individualized programs for their children.

Critical issues which we believe must be reviewed by the U.S. Congress include the following: The main one, No. 1, adequate funding to carry out the mandate for student programs; for inservice training of teachers; for preservice training of teachers; and for the extensive paperwork, clerical assistance, and management support necessary to make this program work.

The second concern is for procedural safeguards for students while the appeal process takes place. The students must stay in an ongoing program while the appeal is considered. This is currently a part of the law.

Third, procedural safeguards for professional educators in cases where parents and professionals are unable to agree on the IEP. A mechanism to resolve such differences is essential.

Fourth, provisions for parental education to assist in supporting the public special education programs.

Fifth, consideration of the inclusion of dropouts and truants as special education students, eligible for the same procedures and programs required by law.

And finally, consideration of ways to limit the time involved and the incredible paperwork and still maintain the process and accountability for individualized educational programs.

As a result of the enactment of Public Law 94–142, special education students must now receive the free public education appropriate to their need.

It is important to encourage local school districts to develop programs and policies which fit those particular needs. It is also important

to permit flexibility in the approach to these special education needs and to avoid rigid prescription of services.

The law and the funding are good tools to improve the quality of public education. However, there is much more work involved to come and much more funding required. But we believe the results will be in the best interests of all children if the Congress continues to support the philosophy and principles of the legislation.

In summation, and away from my notes, Senator Hathaway, we as a local school board would simply urge Congress, whenever a mandate is laid upon us, to provide all of the funding necessary, because of the continuing escalation of community concern with the competing interests of local tax dollars going for education. We, in summation, need all the help we can get from Congress.

Senator HATHAWAY. What is the funding shortfall, would you say, percentagewise?

Mrs. REIDMAN. Dr. Cohen, our director of special education, is here for specific questions.

Dr. Cohen?

Dr. COHEN. I really cannot answer that specifically. I can say that we are planning to develop programs to incorporate students who are not now receiving adequate services or students who are unserved at all. We are trying to develop our programs in Portland to begin to return to our local districts students who are now receiving educational services outside of the public mainstream.

I really, however, cannot come up with an exact figure of what our current shortfall would be. We are in the middle of—or, I should say, close to the end of—a needs assessment with regard to the number of unserved students and the number of underserved students, which I expect to be completed by the end of this month. On the basis of that, I hope to be able to apply the flowthrough funds to meeting some of those needs. However, I cannot say that they will be adequate for what we need.

Senator HATHAWAY. So you do not know whether it is half enough, or a quarter enough, or what, right now?

Dr. COHEN. I really cannot say right now.

Mrs. REIDMAN. We can provide that information, perhaps, when we are through the results of this month's final study.

Senator HATHAWAY. Have you approached the State, to see if the State could help with respect to this shortfall?

Mrs. REIDMAN. Dr. Cohen is regularly approaching the State under their special education——

Dr. COHEN. Portland itself has just recently gotten three proposals funded under the discretionary funds for part B. We also have now $43,000 which was supposed to come to us this year under the flowthrough moneys.

In addition, I am in the process right now of completing a grant proposal which has to be in Augusta tomorrow for beginning some coordinative efforts with regard to preschool handicapped children.

So we are in communication with the State, and we are receiving, I think, support from the State, recognizing the fact that we are the largest area in the State, we have probably the biggest concentration of services in the State, and Augusta has to also, of course, be able to provide services to other areas of the State who are in need.

I am, for myself, quite happy with the support that we have received from Augusta.

Mrs. REIDMAN. For the record, Senator Hathaway, out of some 10,000 students, 1,500 of those are in special education, and that will go up as Project Childfind brings more students into the system.

Senator HATHAWAY. Do you mean there are 10,000 potentially handicapped?

Mrs. REIDMAN. No. We have 10,000 children in our school system; 1,500 are special education students.

Senator HATHAWAY. What percentage do you think you are reaching, or how many more do you have to get to?

Mrs. REIDMAN. Until we have saturated the available students in the area?

Senator HATHAWAY. Yes.

Mrs. REIDMAN. My understanding is we are very close to that. As our tools for diagnosing special education students become more refined, obviously the numbers will increase. But one of the questions we have is we have several special schools in the city for handicapped children, and will this law in any way require that those children come into our system. If so, then that will significantly increase those numbers. We have the Woodford trainable here in Portland. Will they be allowed to stay in that setting, or will the least restrictive setting require them to come into and be mainstreamed in the public schools?

Senator HATHAWAY. Now, the inservice training problem, won't that be partially solved as you go along, get more experience, and get more experienced teachers, so that they can pass on their knowledge to the new ones?

Mrs. REIDMAN. Yes, but there are significant——

Senator HATHAWAY. So that the costs for that later on will not be as great as it is right now.

Mrs. REIDMAN. I would assume you are right, that the startup costs will be the most significant costs, and then they should fall off.

Senator HATHAWAY. Have you noticed any positive effects as a result of the legislation?

Mrs. REIDMAN. I think as a policymaking body, the school committee has embraced the idea of special education, particularly for those students who have not had an individualized program before.

The positive effects are that we have community support. We do not have full community understanding, because so much money today is being geared toward the special education child, and the community, generally, is saying what about the average child, what about the gifted child. We have a lot of concern in this community that bills like this are passed in Augusta and Washington for the less advantaged child, and that there seems to be no money coming forward for that 3 percent of the population who is absolutely clearly gifted and talented; the money is much too scarce.

So we are pleased with this. It meets the needs of the community. But we believe that some effort must be made very soon to start funding the talented and gifted child as well, both spectrums.

Senator HATHAWAY. As you know, a provision for that has been in the Elementary and Secondary Education Act for some time, but has not been funded.

Mrs. REIDMAN. Dr. Cohen?

Dr. COHEN. With regard to some of the benefits that we have seen so far, we have been receiving in Portland, I think, very high caliber individualized educational programs. They clearly specify the objectives for students; they specify the programs that will be set up, and we have already received some of our end-of-the-year evaluations, which are making recommendations for children to return more and more to mainstreaming. Children have recovered the deficits that they had when they originally went into special education programs.

We are seeing more and more, closer communication and collaboration between all of our staff—that means the special education people, as well as the regular instructional staff—in all of our school buildings, who are beginning to collaborate in the development of these programs.

I think in Portland we have a very high percentage in level of parental involvement in the whole process. So all in all, I think that the law has been an impetus to providing higher quality services for creating opportunities for accountability for these services, and has led to our students becoming more and more the mainstream.

And I think perhaps even most important, the law has been an opportunity for our teaching staff to demonstrate its good faith and its good will in its attempt to meet this mandate and to implement this law. There have been many teachers—I am sure this is true all over the State and all over the country—who have been coming to school for 4 hours, who have been coming to school and remaining after hours, in order to try and do the paperwork and develop the programs that are necessary to implement and meet this mandate.

I think there have been a lot of positive aspects to the law and its effects. I think there are still a lot of problems to be ironed out. I think one of the major problems is, the intent of the law is for us to provide better services, higher quality services, to students, but the law requires us to have less time to do that, because we are spending more time writing, feeting, diagnosing, meeting with teachers, meeting with parents, and so there are positive aspects to it, and there are negative aspects to it. So there is going to have to be a balance, or a balance will be reached. But I think all in all, the overall effect has been very positive.

Senator HATHAWAY. Thank you.

Thank you very much, Mrs. Reidman.

Mrs. REIDMAN. Thank you, Senator Hathaway, and welcome to PRVTC. We hope you will take time to tour this magnificent building before you leave.

Senator HATHAWAY. Thank you. I was here for the opening of it in November of 1976.

[The prepared statement of Mrs. Reidman and material supplied for the record follow:]

To: Barbara Reidman, Chairwoman

From: Ron Raynolds, Shlomo Cohen

Subject: Testimony for U.S. Senate Committee on P.L. 94-142

Date: May 1, 1978

The passage of PL 94-142, An Act to provide Education for all Handicapped Children, placed the United States Congress squarely on record in support of individualized programs for children in need of special education. The act requires that extensive efforts be made to locate children in need of special education (Project Childfind) and to identify the nature of their educational needs.

Under provisions of the law free appropriate public education must be provided in the least restrictive setting for every child. This language is summed up in the concept of mainstreaming. In addition related services must be provided free of charge including recreation, speech therapy, occupational therapy and such other related services as may be a part of the Individualized Educational Program (I.E.P.).

The law requires an evaluation by a multidisciplinary team of professionals after parental consent. When the IEP has been completed it must receive parental consent before implementation. The school and the parents then become partners in the process and product of the individualized program.

The law is sound because it provides opportunities for children who have not always received proper attention from the schools. It includes due process procedures and involves parents. Most of all it establishes a way of looking

at educational programs based on careful assessment of individual student needs. The law requires that progress on each IEP must be evaluated annually. It will have the effect of reforming public education, because if students receive special education services based on individually prescribed education programs, then parents of children who do not have special needs may eventually demand the same process to develop individualized programs for their children.

Critical issues which must be reviewed by the U.S. Congress include all of the following:

1. Adequate funding to carry out the mandate:
   a. for student programs
   b. for in-service training of teachers
   c. for preservice training of teachers
   d. for extensive paperwork, clerical assistance and management support necessary to make the programs work.
2. Procedural safeguards for students while appeal processes take place. The student should stay in a going program while the appeal is considered. This is currently a part of the law.
3. Procedural safeguards for professional educators in cases where parents and professional educators are unable to agree on programs. Mechanisms to resolve such differences are essential.
4. Provisions for parental education to assist in supporting special education programs.
5. Consideration of the inclusion of dropouts and truants as special education students eligible for procedures and programs required by law.

6. Consideration of ways to limit the time involved and the paperwork and still maintain the process and accountability for individualized educational programs.

As a result of the enactment of PL 94-142, special education students must now receive the free public education appropriate to their need to which they have always been entitled.

It is important to encourage local school districts to develop programs and policies which fit the particular special education needs of the community. It is also important to permit flexibility in approach to these special education needs and avoid rigid prescription of services.

The law and the funding are good tools to improve the quality of public education. There is much more work involved to come and more funding required, but the results will be in the best interests of all children if the Congress continues to support the philosophy and principles of the legislation.

Portland Public Schools
331 Veranda Street, Portland, Maine 04103

Central Office Administration

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May 18, 1978

Senator William Hathaway
Senate Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Hathaway:

I was present on May 13 at the hearings you conducted in Portland on the effects of PL 94-142. I am concerned about the one-sided nature of the testimony offered and the procedures being employed by Congress to learn about the effects of this law.

In addition to the legitimate concerns and complaints of parents, teachers, administrators, various advocacy groups and others that there is no time to do what is required by PL 94-142, that training is needed, that more support is needed, etc., mention should also be made that more special needs children are indeed receiving more and better services in lesser restrictive environments than prior to the passage and implementation of the law. This should be stated with force and clarity equal to the force and clarity of the statements concerning inadequacies and faults. Congress should seek testimony describing the positive effects of the law as well as the negative effects.

In order to reduce some of the fears of personnel from schools, I think it would be beneficial to amend the law by clearly delineating the rights of school personnel and schools, and by describing procedural safeguards and due process procedures to protect those rights. Most school personnel view the law as guaranteeing rights and due process for parents and handicapped children, but not for school personnel and schools.

In evaluating the effects and effectiveness of PL 94-142, I believe it is important to ask in general, "How well are our schools working?" That PL 94-142 is not working as well as

Portland Public Schools
331 Veranda Street, Portland, Maine 04103

might be hoped may not at all be a function of the law itself. I believe it may be more closely related to the possibility that many of our school programs simply do not work as well as we would hope. Putting new tires on an already broken down car is not going to get us to our destination. I believe we should look at the general condition of our schools, and evaluate PL 94-142 in consideration of the conditions under which it is to operate.

I think new ways have to be found to study the effects of the law, if we are to really see this law become effective. I propose the following study to at least supplement the more traditional ways of gathering testimony. Let Congress identify several individual schools (not school districts) in our country in which the law Is working. Let Congress then study those schools where it Is working, identify the variables related to the successful implementation of the law, and then develop a manual describing the conditions under which PL 94-142 is working and can work. If we can specify and understand the conditions in schools which support the successful implementation of this law, we might then be able to replicate those conditions in more schools. I would be happy to assist in the planning of such a study.

Thank you for your consideration of these thoughts.

Sincerely yours,

Shlomo Cohen

Shlomo I. Cohen, Ph.D.
Director of Special Services
Portland Public Schools

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Senator HATHAWAY. Our next witness is Mrs. Norma Lamarre.

STATEMENT OF NORMA LAMARRE, CHAIRPERSON, MAINE COALITION FOR CHILDREN WITH SPECIAL NEEDS, TOPSHAM, MAINE

Mrs. LAMARRE. Good morning. I am the chairperson of the Maine Coalition for Children With Special Needs. I am also the mother of a 3-year-old daughter with a severe hearing loss.

Although my main interest in special education deals with deaf education in preschool programs, I have been involved with many areas of special education. I will touch lightly on the major problems and go into more detail on deaf education and the lack of preschool programs.

The Maine Coalition for Children With Special Needs has filed a complaint on the lack of compliance with the Department of Health, Education, and Welfare. This complaint will soon go into investigation.

The largest problem in Maine seems to be the noncompliance to both State and Federal laws and the lack of enforcement from the State. There are varying degrees of noncompliance throughout the State, from no programs and improper placement, to parents not being notified of pupil evaluation team meetings.

Most of the school districts do not have any program at all for trainable mentally retarded students, emotionally disturbed students, and hearing-impaired students.

The majority of these students are sent to residential schools, and many of the trainable mentally retarded and emotionally disturbed students who are not sent to residential schools are lumped together in a program that does not meet their educational requirements.

There are also many schools who claim to have special education classes, but these are classes in name only. These classes contain a variety of handicaps and a teacher who is not qualified to teach such a variety. Still, these schools continue to receive Federal money.

There is little, or no enforcement from Augusta, although this does not seem to be a lack of concern, but because the office of special education is severely understaffed. It is almost impossible for them to make proper checks and rechecks of schools to make sure that they are complying with the laws. Therefore, they have to rely on forms that the school districts send them.

The schools continue to receive moneys that they should actually not be getting, because they are not complying with the laws.

At this point in time, I do not feel that any new laws will help. Maine has very good special education laws, but there is no way of enforcing these laws and no way of checking to make sure that the schools are complying.

There is also a great need of financial assistance to schools who want to have a good special ed program, but just cannot afford it.

Another large problem is the fact that parents are not being notified of PET meetings. Children are being placed in special ed classes without their parents' knowledge. These parents have never seen an individual education plan, let alone signed one, allowing the school to place their child in a special ed class.

There parents are often confused and too afraid to ask questions. In some cases where the parents did ask questions, they were intimidated by the school officials.

In my opinion, the areas of special education that is most severely lacking is deaf education. The majority of deaf and hearing-impaired children are sent to Governor Baxter School for the Deaf in Portland. To my knowledge, there are only four enclosed classrooms within the public schools in the State.

Fort Fairfield has a program that is in danger of closing because it was started on a Federal grant that runs out this year. The classrooms in Dexter and Bangor are overcrowded and of very large age range. There is also a program in Waterville. Scattered throughout the State, there are a few students who have been mainstreamed in public school; the remainder, and too large a majority, are sent to Baxter.

From my information, the biggest reason for this is money. Although the Federal Government reimburses schools for teachers and aides, they do not provide money to set up new programs.

These classrooms are extremely expensive, and with all the school districts trying to cut back on their school budgets, they will not put out the money for an enclosed classroom. The State encourages this by reimbursing local schools to send their deaf and hearing-impaired students to Baxter, but there are no funds available to start their own programs or to educate them at the local level.

The most unfortunate part of this is that many of these students, after spending a while in a closed classroom, can be mainstreamed. This has been proven by the great success of the Fort Fairfield program.

Instead, these young children are removed from their homes and placed in a strange environment at age 5. Families that live in the Portland area are more fortunate than most, because they can have their children home evenings and weekends.

There are far too many children who see their families just weekends, once a month, or some, only on vacations. It is because of this unhealthy situation that Baxter becomes their family, and their family becomes a group of people they just happen to be related to.

There are many parents who feel that their children are doing well at Baxter and have no desire to change that present situation. But there are just as many, if not more, who do not feel this way, but have no alternatives.

I feel very strongly that just because a child does not hear, that is no reason to exclude them from public school.

Another area that is severely lacking is pre-school education. I will speak in terms of pre-school for a deaf child, because I know from firsthand experience.

Early intervention can mean success or failure with a deaf child. A normal child begins to learn language from birth, but a hearing loss is usually not detected until age 1. These children have lost out on a year of language of any form. They have to be taught how to use their residual hearing and how to speak.

The earlier this training starts, the better chance a child has. If a child does not have this early training, he is so far behind the other children his age, that he never catches up.

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In my original statement, I had mentioned the fine Head Start in the Bath-Brunswick area. Since that time, I have learned that my daughter is not eligible to attend Head Start because we are an over-income family.

My husband works 50 to 60 hours a week to earn a decent salary; because of this, he earns too much money. The cutoff for a family of five is $7,200.

The Head Start program is the best available one for my daughter, but because we are not a welfare family, she cannot attend.

The practice of using income guidelines is highly unfair to the family and the child, especially when the handicap is as severe as my daughter's.

Another good program in the Brunswick area is the day care center. Aaron may not be eligible for that program, either, because I am not a working mother. Although she does not need day care, she does need a good preschool, which the day care center provides.

I could put her in a private nursery school and continue to provide her with therapy, but I do not feel that there is one in the area that would meet both her educational and social needs, that the day care center or Head Start could provide.

Another reason for a pre-school program that is State or federally funded is the cost to the family. The expense of educating a pre-school deaf child is astronomical and can be devasting to a young family, especially if there are other children in the family, such as mine.

Most families just cannot absorb these costs. As you know, it is very expensive to raise a family, and many people are having problems just making ends meet. My daughter lost her hearing at age 1. That will be a full 4 years before she is ready for school. I figured on a rough estimate, with the cost of her therapy, hearing aids, new ear molds, regular hearing evaluation, and doctor bills, will exceed $9,000. This figure does not include hearing aid repair, batteries, transportation to and from therapy, and babysitting for my other children while I take Aaron to therapy.

With these items, the cost could well exceed $11,000 or even $12,000. Luckily for us, the State and Easter Seals have paid a great deal of this cost, but still the remainder has put a strain on our budget.

We have just received a financial statement from the State to fill out. As soon as they receive the statement, I am sure that we will no longer receive any help from the State to pay for her therapy bill.

Again, this is a situation where I feel income should not be a guideline for eligibility.

There are many parents who do not come under the State income guidelines and are denied any type of aid, or they live in an area that does not have such a facility as Easter Seals. Most parents realize how important this early training is and are willing to pay this enormous amount to help their child. Unfortunately, this leads to severe financial difficulties.

Although this is a brief statement and does not include all my beliefs and feelings, I will be glad to answer any questions that I can. I hope this statement will help you understand how great the lack of education is and how great the need still is.

Senator HATHAWAY. So what you are criticizing is (1) there is not enough money, and (2) the State is not doing the job it is supposed to do?

Mrs. LAMARRE. Right.

Senator HATHAWAY. And you have filed a complaint?

Mrs. LAMARRE. Yes. The complaint has been filed with the Department of Health, Education, and Welfare.

Senator HATHAWAY. How long ago was that filed?

Mrs. LAMARRE. I believe 3 or 4 weeks ago, they received the final draft.

Senator HATHAWAY. So no action has been taken on it yet?

Mrs. LAMARRE. Not so far. The investigation will begin very soon.

Senator HATHAWAY. Bill, do you know anything about that? This is Mr. Halloran, from the Department of Education.

Mr. HALLORAN. I assume it is with the Office of Civil Rights, based on discrimination?

Mrs. LAMARRE. Yes; it is. I have a copy of the complaint, if you would like to see it.

Senator HATHAWAY. What else have you done, besides filed a complaint, in regard to this discrimination?

Mrs. LAMARRE. We have been working in August with legislature, trying to get laws passed, especially on the noncompliance, and having very strict guidelines of saying, "Well, your school is not complying," and setting down actual time limits, to saying, "By such and such a date, if you are not complying, we will have a hearing," and things like this.

Senator HATHAWAY. You have been working with the State department of education to work this out?

Mrs. LAMARRE. Yes.

Senator HATHAWAY. And they are aware of the fact that the various schools are not complying?

Mrs. LAMARRE. Oh, yes, very aware. But as I mentioned, they do not have the staff to deal with it. They are very severely understaffed.

Senator HATHAWAY. Have you surveyed all of the schools in the State?

Mrs. LAMARRE. We have not surveyed all of them, but between the State and from parents themselves who call us or write to us, we know of a great many.

Senator HATHAWAY. Do you have any estimate of how many are being discriminated against?

Mrs. LAMARRE. I think there is a number in the complaint. I am not sure, I would have to check. It is a very, very large amount of children, who are either misplaced or receiving no services at all. Improper placement seems to be a very severe problem.

Senator HATHAWAY. By "improper placement," you mean what?

Mrs. LAMARRE. A child who is placed in a program that does not meet his educational requirements.

Senator HATHAWAY. What examples do you have of that?

Mrs. LAMARRE. Those are also in the complaint, and some of them are also confidential, which cannot be released at this time, until the Department looks into them.

Senator HATHAWAY. I see.

Mrs. LAMARRE. There are many examples of children who are educably retarded children, who are placed in a regular classroom, with no supportive services; or emotionally disturbed children who are placed in a class of retarded children and not receiving the services that they

need; and children who are emotionally disturbed and being expelled from school as a disciplinary problem, rather than having their needs met as being emotionally disturbed children.

Senator HATHAWAY. Do you think the schools are doing this intentionally, or just not understanding the child, or what?

Mrs. LAMARRE. Not understanding the child, lack of funds, lack of properly trained teachers who do not recognize the symptoms.

Mainly, many of the school systems in the area are very small, they do not have the funds to deal with it.

Senator HATHAWAY. Right, but there is really no intention to discriminate; it is just that they do not understand?

Mrs. LAMARRE. Right. I really do not feel, in most school districts, that it is deliberately done.

Senator HATHAWAY. OK. Thank you very much.

[The prepared statement of Mrs. Lamarre follows:]

Senator HATHAWAY. Our next witness is Mr. John T. Kierstead, director of the division of special education, Department of Educational and Cultural Services.

STATEMENT OF JOHN T. KIERSTEAD, DIRECTOR, DIVISION OF SPECIAL EDUCATION, DEPARTMENT OF EDUCATIONAL AND CULTURAL SERVICES, AUGUSTA, MAINE

Mr. KIERSTEAD. Thank you, Senator Hathaway.

I did forward to you a copy of some testimony that we had prepared. I will just reiterate some of that testimony.

On February 17, 1977, a number of organizations did get together and submit amendments to the Senate subcommittee, to Senator Jennings Randolph and to John Brademas. Those groups included the Education Commission of the State's two State school offices, the National Governors' Conference, et cetera. There were about seven organizations.

On July 21, 1977, the Maine State Board of Education passed a resolution in support of those amendments to 94–142. Again, a copy of that resolution was included in my testimony that was sent down to the committee.

The Federal Government must play a much more helpful role than it is permitted under existing statute, 94–142, and that particular statute should be amended to assure the following: (1) a fair distribution of special education costs between the Federal Government and the States; (2) a contractual obligation by the Federal Government to pay each State the percentage of special education costs which it is currently authorized; (3) a method of counting handicapped children which reflects the scope of special education and related services actually provided; (4) the value of diversity in the administration of special ed programs at the State and local level; and (5) a within-State distribution of 94–142 funds which is consistent with the constitutional responsibility of States to assure equal educational opportunity for all handicapped children; and (6) an individualized educational program developed in a cooperative and a compassionate environment.

Let me deal first with the fairness in the distribution of special education costs: 94–142 requires every participating State to make available a free, appropriate public education to all handicapped children, but makes the Federal Government only a minority partner in bearing the associated costs.

The act currently authorizes Federal payments for each eligible special ed student at a rate equal to 5 percent of the national average for 1978, 10 percent in 1979, 20 percent in 1980, 30 percent in 1981, and 40 percent in 1982. Accordingly, Public Law 94–142 entitles each State to Federal assistance that will range from about $70 per student in 1978 to roughly about $500 per student by 1982.

The fact is, however, that the States with the least developed special ed services are already allocating more State and Federal dollars in excess cost of handicapped children than they might receive under 94–142 in 1982. And States with the best developed programs are doing far better.

It is evident that in 1979, 10 percent will equal no more than 8.8 percent, while in 1980, the projection now is for 12 percent of the 20 percent. So obviously, there is a heck of a loss in terms of what was authorized in terms of what we are going to actually get.

Who knows what it will be in 1982 or 1981, and it does not look like it is going to reach the 40-percent level, the way Congress is going.

The Federal Government should consider increasing its planned contribution to Public Law 94–142 because of the costs which must be incurred to implement provisions of the act which are not required by 504, which are not required by many State laws, and which are not required by any court order.

Such include written individuals plans, special bookkeeping, record-keeping, accounting systems, accelerated personnel development and training. With this situation in mind, the administration and Congress must modify 94–142 to eliminate the phase-in of Federal contributions from 5 percent in fiscal year 1977 to 40 percent in 1982, and to authorize the 40 percent of national average per pupil expenditure, multiplied by the child count in the immediate future. Since the law requires immediate provision of implementation, there is no educationally justified rationale for the phase-in procedures that are now going on; or, as an alternative to that, to amend 94–142, to hold recipients harmless from the requirements of the act, which transcend the mandates contained in 504 of the Rehabilitation Act of May 4, 1977, until such time as the Federal contribution equals the 40-percent level multiplied by the number of eligible students.

This would assure every handicapped child his or her basic civil rights, but would permit the State and local agencies the time necessary to meet the requirements of 94–142, which are over and above those in 504 of the Rehabilitation Act.

Second, assuring Federal financial support. The Federal Government must be willing not only to increase the funding authority in 94–142, but also make its financial commitment contractually binding, while States that accepted 94–142 funding must bind themselves legally to educate all handicapped children according to the Federal rules.

The Federal Government is under absolutely no obligation to appropriate 1 cent in return. This is unfair and it provides no political incentive for the Federal Government to fund 94–142 to the maximum extent authorized.

Indeed, the current budget ceiling of 94–142 in the Senate is $550 million, almost $110 million, or about 20 percent short of the fiscal year 1979 authorization. Accordingly, 94–142 should be amended to create a firm, legal obligation on the part of the Federal Government to finance a significant portion of the program.

The statute should be amended to specify that approval of the State plan by the U.S. Commissioner of Education for Federal participation constitutes a contractual obligation by the Federal Government to pay the State the percentage of cost authorized by statute.

Such a provision would give all States participating in the program the right to Federal assistance without regard to annual appropriation levels. There is precedent set for such provisions in the medicaid program, title 19 of the Social Security Act, and other Federal statutes.

This approach is consistent with the framework of the law which requires a State obligation to the full program of services; the Federal obligation should be equally firm.

Current census procedures require that State special education students be counted on an unduplicated count; that is, that every child may be counted only once, no matter the number of his or her handicapping conditions. As a result, the current census makes absolutely no allowance for interstate differences in the cost and quality of special education services delivered.

Indeed, it is not only unfair to provide an incentive for improving special education services, but also unfair to penalize a State who has opted to provide high quality service on its own.

The current census method prohibits against counting special education on a cumulative basis. Children may be eligible for Federal aid only if they received special education on October 1 or February 1. Children who receive at any time during the year are not counted in that particular count. Accordingly, the current counting system imposes a harsh penalty against all States and local educational agencies which operate large speech therapy programs and other special education services which are not and need not operate on a daily basis.

The present census method should be amended to provide for a duplicative and cumulative count of all pupils receiving special education during the first full week of school during the month of February. This census method retains the administrative simplicity of the present procedures we have and provides an incentive for high quality services, and will give at least partial recognition to special education programs which do not operate on a daily basis.

State discretion in program administration. Public Law 94–142 requires that States receiving assistance must assign their State educational agencies the responsibility for general supervision of all services received by handicapped children under the provisions of their individualized educational programs. All services, including those services provided by any other State or local agency, would fall under its supervision.

The intent of this provision clearly is to provide a single point within State governments for overall planning, coordination, and accountability. The specific language of the statute, however, has two serious shortfalls. First, it fails to acknowledge that many States cannot grant authority to a single element of government except by constitutional amendment. The proposed regulations for 94–142 attempt to resolve this by indicating that the States can comply with the general supervision of requirement through such arrangements as written interagency agreements.

This undercuts the apparent intent of general supervision clause, because such agreements frequently would be constitutionally voidable and unenforceable and subject to changes in commissioners.

Theoretically, of course, the Federal Government might insist that the State alter their constitution, but this is neither politically sound nor necessarily advantageous to handicapped kids.

Indeed, the greatest weakness of the present general supervision requirement is its assumption that centralization of authority is the best way to assure equal rights for handicapped children.

There are better ways to deal with the problem. Specifically the general supervision requirement should be amended to specify that the State educational agencies shall be assigned responsibility for the general supervision of special ed, unless State law requires otherwise.

States which legally cannot grant the State educational agencies such authority may satisfy the general supervision requirement by enacting legislation which guarantees the following: Common standards of special education and related services, no matter what agency or what jurisdictional entity is providing them; second, a process of coordinating provider of services; and third, an agency of last resort, which in fact would act as an intermediary to resolve any interagency problems with the delivery of special education services.

Public Law 94–142 presently prohibits employees of agencies serving handicapped children from acting as surrogate parents. The apparent intent of this requirement is to prevent agencies serving handicapped children from placing their own interests above the interests of the children. This is a reasonable safeguard in principle, but as presently drawn, has the effect of treating agency employees who are not directly involved in the child's education in the same manner as those who are.

We believe that it is unnecessarily restricting, and particularly so in the cases of large agencies, characterized by a high degree of internal division of labor and specialty, like human services or mental health and corrections.

Suppose, for example, a child's educational program calls for an EPSDT benefit administered through a local welfare department. The present law disqualifies the welfare worker from serving as the child's surrogate parent, even in the event that he or she has nothing to do with the education of the child.

I believe that this and similar situations could be avoided by amending 94–142 to provide a surrogate parent the right to in fact represent the child if they are not directly involved in the child's program.

You have several of the amendments. I would like to make a couple of points with regard to the individual educational plan, which I think Portland did point out has a tremendous potential, in terms of providing better education for all students, not just handicapped students. I think that is one of the things we are learning in implementing the law.

Public Law 94–142, however, requires that individual educational plans be developed. And the experience in many States is that there is an interpretation that that particular plan will be a legally binding document on behalf of anybody who has an activity to carry out within that plan.

Local educational agencies fear such programs being developed because of legal action, many in fact attempt to look at those, in writing those plans, in terms which are not judicially assailable, or the process of developing the plan becomes adversarial and with little benefit at all in terms of education.

The value of the IEP as an educational instrument can be assured best by amending 94–142 to specify that it is intended as an educational planning device, rather than a contract for services or a guarantee of educational achievement.

Senator Hathaway, let me just say one thing with regard to a section of the law which we find very—I guess a lot of pressure on us, in that we have had difficulty getting State funding for staff to administer the special ed law. I have nine professional staff. I have one of them who is employed by the State of the nine.

Because of the 5-percent factor, and where the division of special ed is in terms of the amount of Federal Government subsidy, we are allowed to use the $200,000 ceiling. We are using that $200,000 ceiling for staff.

If we were a larger State, if we were receiving more Federal money, we would be allowed to use the 5-percent factor, which in fact would give us an excess beyond that $200,000 for staff.

But this is not happening. This session, we had three staff requests in to the Governor. That was removed by the Governor. We went back to the legislature this session and asked for the same three staff. That in fact did not go through this session of the legislature.

The other point is that right now, depending on the Federal dollar, we have a part D grant that is funding three staff. That grant runs out May 30, in about 2½ weeks, and we have three staff that may not be with us within 2½ weeks. That money is running out. It is "D" money, inservice, preservice training money, from the U.S. Office of Education. So we will be down to six staff.

I have, as I pointed out, a number of issues that are really related to our own law and the changes that we are anticipating. Bill is well aware of it. We did have a site review last year from the U.S. Office of Education and have gone through many of the changes that were necessary as a result of that review.

I am open for any questions.

Senator HATHAWAY. How much will they need to have an adequate staff?

Mr. KIERSTEAD. Well, if we are talking and looking at national incidence figures, and if we had the total 40 percent that was intended from Congress, it would appear to me that we would have to double our staff, in fact, to do what is necessary.

We would need close to 18 staff members to carry out the activities that in fact are required of us. I think Maine is going a little further in some areas. As an example, we talked about monitoring and evaluation. We have 120-some superintendencies, I believe, at this point. This year, we will actually be into 35 different superintendencies, spending 2½ to 3 days, reviewing their whole special ed programs, making recommendations, compliance recommendations, making in fact recommendations that are good practice recommendations. That will be about 5 years, actually, if we keep going the way we are going, before we can get into every district in this State.

I have two staff members that do this full time, and they draw from the community at large, the educational community and special education participate in that review free of charge to the department of education and the division of special ed, which in fact is, I feel, very good for the superintendents to release their staff, to go and look at other superintendents' districts, in terms of what they are doing in special education.

Senator HATHAWAY. What is the cost per student for special ed?

Mr. KIERSTEAD. Roughly, $2,800, if we are averaging.

Senator HATHAWAY. And what is the normal, for a normal child?

Mr. KIERSTEAD. Elementary, roughly $840 some, I think, at this point; secondary, $1,285. That is going up, I believe, for this year with the new financing changes.

Senator HATHAWAY. So it is about three times the cost?

Mr. KIERSTEAD. Right. And for some disabilities, it is five times the cost, emotionally disturbed children—the more severe the child, the higher the cost of education.

Senator HATHAWAY. You mentioned that the Federal formula is not doing much good. Do you think the 40 percent would be adequate?

Mr. KIERSTEAD. I think the 40 percent should have been on the front end, and the 5 percent should have been on the back end. And in 1982, if you phased out 5 percent, it would give the States 5 years at least to phase down and prepare for the integration. You are asking for mandated services right away, and you are not providing the money right away. You are saying, "Do it now, or we are not going to give you the money to do it until 1982." This is a terrible incentive for States to even begin to appropriate. Maine has a super financial reimbursement act. I really believe that. We have got a lot of support going out to the LEA's. We have some superintendents here today, and I am sure they will agree that we do have a good finance act for special education. We are getting the dollars out there. The legislature is committing, the State board is committing, and the money has never been turned down in terms of program support for special education.

The needs are really determined by looking at what we have and where we are going. We are close to 9 percent. If we look at 10 to 12 percent maybe as a national average, and even the statistics that are being used in the U.S. Office of Education may not be as accurate as we think, but I am saying that even in Maine, the 10-percent figure is being reached relatively quickly.

Senator HATHAWAY. Do you think we could phase it out altogether, the Federal support, if we started high enough to begin with?

Mr. KIERSTEAD. Well, I think we should have it. I think the question is when we should have it, or we go back to letting the States implement their own mandatory laws.

As you know, Maine had a mandatory special ed law in 1973, based on the model developed by CEC—the Council for Exceptional Children. The Council for Exceptional Children actually was very active in writing 94–142, so we had the same framework. We had teams, we had due process. But it appears to me that if the Federal Government is going to require more than the States are requiring of themselves, then they have got to come through with the dollars to do that.

I think they are doing it, but I think they are doing it—as a matter of fact, we are going from $1.4 million this year to $2.8 million, or double. We are serving roughly 20,000 students in special ed in the State of Maine.

I would caution, however, that without some—people do not like regulations and they do not like guidelines and they do not like a lot of layons—but other States, and as an example, Massachusetts has actually got 15 percent now of the national average. BEH recommends 12 percent. They are looking at where that difference is. And a lot of that difference maybe should be picked up by other kinds of programs that are out there, title 1, remedial reading.

I think we have got to be careful. We have a strong dropout bill in this State. My concern is that a lot of the dropout is going to end up in special ed automatically, without being looked at as being exceptional by our definitions, both Federal and State.

Senator HATHAWAY. You get title 4 and vocational ed money, too, right, for handicapped?

Mr. KIERSTEAD. That is right. A minor amount, $163,000 until title 4; $265,000 in vocational ed.

Senator HATHAWAY. And a State surplus?

Mr. KIERSTEAD. And a State surplus. The government has a good surplus. It is just not coming back to the right people.

Senator HATHAWAY. Thank you very much, Mr. Kierstead.

[The prepared statement of Mr. Kierstead follows:]

STATE OF MAINE
Department of
Educational and Cultural Services
AUGUSTA, MAINE 04333

Testimony to the Senate Subcommittee on the
Handicapped at the May 13th Subcommittee Hearing in Portland, Maine

JOHN T. KIERSTEAD
Director of Special Education
Maine Department of Educational and Cultural Services

Members of the Subcommittee, my name is John T. Kierstead and I am Director of Special Education for the State of Maine and offer the following testimony on P.L. 94-142, "Education of All Handicapped Act."

On the following pages, I have attempted to point out some conflicts in implementing P.L. 94-142, while at the same time recommending some action, both state and federal, to resolve these conflicts.

I have further taken the liberty of reiterating previous testimony sent to the Senate Subcommittee in support of recommended amendments to P.L. 94-142.

Four seasons for Me.

BACKGROUND

On November 29, 1975, President Ford signed into law the Education for All Handicapped Children Act; P.L. 94-142. This legislation contains extensive amendments to the Education of the Handicapped Act (E.H.A.), particularly in Part B which provides assistance to states in the initiation, expansion, and improvement of programs for the education of the handicapped.

On August 23, 1977, regulations were published for the implementation of P.L. 94-142. These regulations are extensive, complex and leave much to interpretation. Therefore they are difficult, at best, to implement without repeated guidance from the United States Office of Education, Bureau of Education for the Handicapped.

With the passage of P.L. 94-142, the role of the federal government in education of the handicapped has significantly increased, and the responsibilities of local and state education agencies have been dramatically altered. The law includes provisions designed to insure that all handicapped children have a free and appropriate public education available, to ensure that their rights and those of their parents are protected, and to ensure that assistance will be available to local and state education agencies in providing the education to handicapped children.

On February 17, 1977, the following organizations; The Education Commission of the States, The National Governors' Conference, The National Conference of State Legislatures, The National Association of State Boards of Education and The Council of Chief State School Officers, joined in a letter to Senator Jennings Randolph, Chairman of the Senate Subcommittee on the Handicapped, and Representative John Brademas, Chairman of the House Subcommittee on Select Education, expressing concerns about the Education for All Handicapped Children (P.L. 94-142). That letter emphasized that, if the basic goals of P.L. 94-142 are to be achieved, amendment of the statute is required to resolve several problems identified during the rule-

making process.

On July 21, 1977, the Maine State Board of Education passed the following resolution in support of the amendments offered by this Consortium. It is critical that this Senate Subcommittee understand the State's problems in implementing this law.

R E S O L U T I O N

MAINE STATE BOARD OF EDUCATION

July 21, 1977

WHEREAS, the Education for All Handicapped Children Act (P.L. 94-142) is now law, and

WHEREAS, the Education for All Handicapped Children Act (P.L. 94-142) goals can only be achieved by amending the statute, and

WHEREAS, the U.S. Office of Education, Bureau of Education for the Handicapped has promulgated proposed rules and regulations concerning the administration of P.L. 94-142, the Education of All Handicapped Children Act, and

WHEREAS, each of the states and the local school districts of this country have a direct interest in the final rules and regulations which will be submitted to the Congress, and

WHEREAS, the implementation of P.L. 94-142, its rules and regulations will have serious consequences on the administration of programs for exceptional children.

NOW, THEREFORE, BE IT RESOLVED that the Maine State Board of Education supports all the amendments to P.L. 94-142 presented by: National Association of State Boards of Education, National Conference of State Legislatures, the National Council of Chief State School Officers, National School Boards Association, National Governors Conference and the Education Commission of the States to Senator

Jennings Randolph, Chairman of the Senate Subcommittee on the Handicapped and Representative John Brademas, Chairman of the House Subcommittee on Select Education on February 17, 1977.

BE IT FURTHER RESOLVED that the Maine State Board of Education strongly encourages the United State Office of Education, Bureau of Education for the Handicapped, to publicize widely the final regulations, soliciting comments concerning these final rules and regulations from groups such as, National Association of State Boards of Education, National Conference of State Legislatures, National Council of Chief State School Officers, National Governors Conference and Education Commission of the States and other groups interested in implementation of programs for handicapped children.

The Federal Government must play a much more helpful role than is permitted under the existing provisions of P.L. 94-142. Specifically, P.L. 94-142 should be amended to assure the following:

I. a fair distribution of special education costs between the Federal Government and the states;

II. a contractual obligation by the Federal Government to pay each state the percentage of special education costs which is currently authorized;

III. a method of counting handicapped children which reflects the scope of special education and related services actually provided;

IV. the value of diversity in the administration of special education programs at the state and local level;

V. a within-state distribution of P.L. 94-142 funds which is consistent with the constitutional responsibility of states to assure equal educational opportunity for all; and,

VI. an individualized educational program developed in a cooperative and compassionate environment.

I. Fairness in the Distribution of Special Education Costs

P.L. 94-142 requires every participating state to make available a free appropriate public education to all handicapped children but makes the Federal Government only a minority partner in bearing the associated costs. The Act currently authorizes Federal payments for each eligible special education student at a rate equal to 5 percent of the national average per pupil expenditure in 1978; 10 percent in 1979; 20 percent in 1980; 30 percent in 1981; and 40 percent in 1982. Accordingly, P.L. 94-142 entitles each state to Federal assistance that will range from about $70 per special education student in 1978 to perhaps $500 per special education student in 1982. The fact is, however, that the states with the least-developed special education services are already allocating more state and local dollars to the excess costs of handicapped children than they might receive under P.L. 94-142 in 1982. And states with the best-developed programs are doing far better.

It may be argued, of course, that states should assume the preponderant responsibility for financing special education as education is essentially a state constitutional responsibility. This line of reasoning, however, fails to acknowledge the fact that laws and attitudes on the education of handicapped children have changed so rapidly in the last five years that the cost of overcoming historical service deficits in the next two or three years is more than states or their local governments can raise from their own resources.

It is evident that in 1979 the 10 percent will equal more like 8.8 percent while in 1980 the projection is for 12 percent rather than 20 percent. Who knows what they will be in 1981 and 1982. It does not look like it will reach the 40 percent level by 1982.

The Federal Government should consider increasing its planned contribution to P.L. 94-142 because of the costs which must be incurred to implement pro-

visions of the Act which are not required by Section 504, which are not required by many state special education laws, and which are not required by any court orders. These include, among others;

- written individualized educational programs;
- special recordkeeping;
- development of new accounting systems; and
- accelerated personnel development and training.

The cost of these requirements, admittedly, will vary from state-to-state depending on the nature of their own existing laws. Nonetheless, they will be very substantial in some instances -- especially in states which have yet to require some form of written individualized program. Data from Massachusetts, for example, argue that a well-developed individualized program, a program that is not mere "boilerplate," costs no less than $100 per special education pupil. The fact remains, however, that authorized payments under P.L. 94-142 are only about $70 per eligible pupil in 1978 and $150 per eligible pupil in 1979.

Recommended Amendment

With this situation in mind, the Administration and the Congress must modify P.L. 94-142:

1. To eliminate the phase-in of federal contributions (from 5 percent for fiscal year 1977 to 40 percent for fiscal year 1982), and to authorize 40 percent of the national average per pupil expenditures multiplied by the child count beginning for fiscal year 1978. Since the law required immediate provision of services, there is no educationally justifiable rationale for a phase-in of Federal support (see Appendix, Amendment A (1)).
2. Or as an alternative to (1), amend P.L. 94-142 to hold recipients harmless from the requirements of the Act which transcend the mandates

contained in Section 504 of the Rehabilitation Act on May 4, 1977, until such time as the Federal contribution under P.L. 94-142 is equal to 40 percent of the national average per pupil expenditure multiplied by the number of eligible children. This would assure every handicapped child his or her basic civil rights but would permit state and local educational agencies to use the funds necessary to meet the requirements of P.L. 94-142 which are over and above those in Section 504 (see Appendix, Amendment A (2)).

II. Assuring Federal Financial Support

The Federal Government must be willing not only to increase the funding authority for P.L. 94-142, but also to make its financial commitment contractually binding. While states that accept P.L. 94-142, funding must bind themselves legally to educate all handicapped children according for Federal rules, the Federal Government is under absolutely no legal obligation to appropriate one cent in return. This is unfair and it provides no political incentive for the Federal Government to fund P.L. 94-142 to the maximum extent authorized. Indeed, the current budget ceiling for P.L. 94-142 in the Senate is only $550 million -- almost $110 million or about 20 percent short of the fiscal 1979 authorization.

Recommended Amendment

Accordingly, P.L. 94-142 should be amended to create a firm legal obligation on the part of the Federal Government to finance a significant portion of the program. The statute should be amended to specify that approval of a state plan by the U. S. Commissioner of Education for federal participation constitutes a contractual obligation by the Federal Government to pay to the state the percentage of cost authorized by the statute. Such a provision would give all

states participating in the program a right to Federal assistance without regard to annual appropriation levels. There is precedent for such a provision in the Medicaid Program, (Title XIX of the Social Security Act), and a number of other Federal statutes. This approach is consistant with the framework of the law which requires state obligation to the full program of services. The Federal obligation should be equally firm (see Appendix, Amendment B).

III. Securing an Accurate Child Count

The amount of assistance provided under P.L. 94-142 in any fiscal year is contingent on the size of the Federal appropriation, the national average per pupil expenditure, and the number of special education pupils who are aid-eligible. Thus, it will be impossible for the states to receive 100 percent of the $315 million appropriation for 1978 as the number of eligible special education pupils (3.3-to-3.6 million) multiplied by the average per pupil expenditure (about $1,400) generates an aid distribution of only $260 million. The chief cause of this low aid distribution is the method which P.L. 94-142 prescribes for determining the number of aid-eligible special education pupils.

The population of aid-eligible pupils is determined by averaging the number of handicapped children within certain age ranges receiving special education on October 1 and February 1 in the year preceding the one in which aid is actually paid. While it was expected that this counting procedure would generate an aid-eligible population for fiscal 1978 of about 4.6 million handicapped pupils, the actual count appears closer to 3.6 million. This shortfall can be attributed to a variety of problems. One is the purely transitional difficulty of implementing a new census mechanism; another is the temporary limit on the number of aid-eligible children with learning disabilities. There are two other problems, however, which are more basic.

First, the current census procedure requires that special education students be counted on an "unduplicated" basis; that is, each child may be counted only once, no matter the number of his or her handicapping conditions. As a result, the current census makes absolutely no allowance for interstate differences in the cost and quality of special education services. Indeed, it not only fails to provide an incentive for improving special education services but also unfairly penalizes states which have opted to provide high quality services on their own initiative.

A second serious weakness in the current census method is its prohibition against counting special education students on a "cumulative" basis. Children may be considered eligible for Federal aid only if they received special education on either October 1 or February 1. Children who received at any other point in the year are excluded. Accordingly, the current counting system imposes a harsh penalty against all states and local educational agencies which operate large speech therapy programs or other special education services which are not and need not be operated on a daily basis.

Recommendation

The present census method should be amended to provide for duplicated and cumulative count of all pupils receiving special education during the first full school week during the month of February (see Appendix, Amendment C). This census method retains the administrative simplicity of the present procedure, provides an incentive for high quality services, and will give at least partial recognition to special education programs which do not operate on a daily basis.

IV. State Discretion in Program Administration

While many state officials are distressed by P.L. 94-142 because of its inadequate funding, dollars are not their only concern. They are equally or

more upset by the fact that P.L. 94-142 often requires states to scrap established procedures for administering special education programs without regard to their effectiveness or constitutionality, and without any proof that the Federally-mandated substitutes will work any better. Most of all in this respect, they object to the way in which P.L. 94-142 has attempted to centralize responsibility for the "general supervision" of special education services and the way in which the Act has attempted to implement the procedural safeguards that are due each child as a matter of legal right.

A. The "General Supervision" Issue

P.L. 94-142 requires that states receiving its assistance must assign their state educational agency responsibility for "general supervision" of all services received by handicapped children under the provisions of their individualized educational programs. All services, including those of any other state or local agency fall under its supervision. The intent of this provision clearly is to provide a single point within state government for overall planning, coordination and accountability for the education of handicapped children. The specific language of the statute, however, has two serious shortcomings.

First, it fails to acknowledge that many states cannot grant authority to any single element of government except by constitutional amendment. Presently, most state constitutions divide authority over special education among several governmental units, typically, the state educational agency, executive departments, under the governor, and local educational agencies.

Proposed regulations for P.L. 94-142 attempt to resolve these problems by indicating that states can comply with the general supervision requirement through such arrangements as written interagency agreements. This undercuts the apparent intent of the general supervision clause, however, because such agreements frequently would be constitutionally voidable and

unenforceable. Theoretically, of course, the Federal Government might insist that states alter their constitutions but this is neither politically practicable nor necessarily advantageous to handicapped children.

Indeed, perhaps the greatest weakness of the present general supervision requirement is its assumption that centralization of authority is the best way to assure the educational rights of handicapped children. Experience in education and in many other public service functions, however, indicates quite clearly that this is not always the case. In fact, centralization of authority may lead to a special education service apparatus that is not more responsive, but less so -- and especially where the scale of the service delivery system is relatively large.

There are better ways to deal with the problem. Specifically, the present general supervision requirement should be amended to specify that the state educational agency shall be assigned responsibility for the general supervision of special education unless state law requires otherwise. States which legally cannot grant the state education agency such authority may satisfy the general supervision requirement by enacting legislation which guarantees the following; first, common standards for special education and related services no matter what agency or jurisdiction provides them; second, a process for coordinating providers of special education and related services; and third, an "agency of last resort" with the power to resolve interagency disputes over responsibility for providing handicapped children special education and related services (see Appendix, Amendment D).

B. The Due Process Machinery Issue

P.L. 94-142 also conflicts with established state machinery for assuring handicapped children due process of law. Most of these conflicts, however, are essentially of a technical nature. One relates

to surrogate parents; the other, to the mechanics of the hearing appeals process.

P.L. 94-142 currently prohibits employees of agencies serving handicapped children from acting as surrogate parents. The apparent intent of this requirement is to prevent agencies serving handicapped children from placing their own interests ahead of the children themselves. This is a reasonable safeguard in principle but as presently drawn, has the effect of treating agency employees who are not directly involved in a child's education in the same fashion as those who are. We believe that this is unnecessarily restricting, and particularly so in the case of large agencies characterized by a high degree of internal division of labor and specialization. Suppose, for example, that a child's educational program calls for EPSDT benefits administered through a local welfare department. The present law disqualifies a welfare caseworker from serving as that child's surrogate parent even in the event that he or she had nothing to do with the EPSDT program. We believe that this and similar situations could be avoided by amending P.L. 94-142 to provide that a surrogate for the parents or guardian of a child shall not be a public employee involved directly in the education of the child.

P.L. 94-142's conflict with mechanics of the state hearings appeals process results wholly from the fact that several states--Florida, Nebraska, and Rhode Island, for example, do not provide for an administrative review by the state educational agency of hearings held at the local level. Persons dissatisfied with the outcome of local hearings have the right of appeal, but only to the courts or other state agencies. This arrangement in some instances is mandated by the constitutional powers of local educational agencies and in other

cases by a judgment that the state educational agency is not the best possible point of hearing review. The important point, however, is that lack of an administrative appeal to the state educational agency in no way contravenes the principle of due process so long as there is access to the courts. Accordingly, we recommend that the Act be amended to remove the separate authorization for appeals to the state educational agency (see Appendix E).

V. An Equitable Distribution of Assistance for the Handicapped

Beginning with fiscal 1979, states participating in the P.L. 94-142 program must distribute 75 percent of their receipts under the Act to local educational agencies in relation to the number of handicapped children receiving special education and related services. This formula, however, permits wealthy communities with high quality services to draw as much Federal aid as poor communities with relatively undeveloped services. As such, it will direct Federal funds not only without particular regard to the character of special education needs, but also in a pattern that will materially undermine overall state school finance equalization efforts, and especially so during the 1980's when Federal funding may exceed $1 billion annually.

This problem, to be sure, could be overcome under the current provisions of P.L. 94-142 if state educational agencies were to exploit a provision which permits them to reallocate entitlements from localities that are providing "full opportunity" to localities that are not. This provision, however, permits reallocation only on an ad hoc basis, requires states to acknowledge that they are not providing all children "full opportunity," and leaves state educational agencies open to the same charges of "favoritism" which led the Congress to substitute the current formula for the old Title VI-B grant application mechanism. Accordingly, we believe that the Congress should amend P.L. 94-142 in a manner that would retain the 75 percent allocation for local educational

agencies, but that would authorize states to allocate Federal funds to local educational agencies in accordance with a uniformly applicable formula of their own creation which would permit consideration of such factors as the prevalence of special education needs and the ability of localities to support them from otherwise available resources (see Appendix, Amendment F).

VI. A Workable Individualized Educational Program

P.L. 94-142 requires that there be an individualized educational program developed for each handicapped child. Experience with individualized educational programs in several states, however, indicates that their value for educational planning depends to a considerable degree on local perceptions of their legal implications. Local educational agencies which fear that such programs will be used as the basis for legal action "cover" themselves by writing them in terms which are judicially unassailable. Or, the process of developing an individual program becomes an adversary proceding with little if any educational benefit. The value of the individualized educational program as an educational instrument can be assured best by amending P.L. 94-142 to specify that it is intended as an educational planning device rather than as a contract for services or a guarantee of educational achievements (see Amendment G).

Description of Current Services in Maine

In 1973, the Division of Special Education, Maine Department of Educational and Cultural Services, developed a mandatory special education law based on a model developed by the Council for Exceptional Children. This law included many provisions announced in P.L. 94-142, e.g., educational plans (I.E.P.'s), child study teams (P.E.T.'s), procedural safeguards (due process procedures), etc. However, changes were necessary to put Maine in compliance and assure that local administrative units were implementing P.L. 94-142. These units

today are still in the process of implementing 94-142 and Maine's Chapter 404, Title 20.

In June, 1977, a five member team from the Bureau of Education of the Handicapped conducted a site review for one week in Maine. This team visited public schools in the four largest cities in the state, two rural systems, a state institution for the mentally retarded, and a private school for the emotionally handicapped. They reviewed all administrative policy in the State Department of Educational and Cultural Services regarding the implementation of P.L. 94-142. The findings of the visitation team coupled with legislative changes in 1977 necessitated parental consent for student evaluation, parental membership on Pupil Evaluation Teams, parental consent for initial placement, prior notice for changes in placement, procedual safeguard changes, and responsibilities of other agencies, for compliance (Administrative Letter #6).

Issues and Recommendations

There are believed to be no barriers to the implementation of P.L. 94-142 residing in Maine State law (Title 20, Chapter 404, Maine Revised Statutes Annotated). Details of broad policies and procedures described in the law were relegated to "guidelines and regulations established by the commissioner." The State law is not as detailed as the federal law, and the titles of the exceptionalities in State law correspond to but do not duplicate the federal categorical labels, but these issues are not significant.

There are a number of problems relating to implementation of P.L. 94-142 contained in discrepancies between State and federal regulations, in current practices and resources of the State, and in interdepartmental coordination in Maine.

Issue:

1) Of the nine professional employees of the State Division of Special Education, only one (1) is state-funded. This practice, coupled with the $200,000 federal limit on administrative expenditures means that adequate numbers of staff are not available to develop, administer, monitor and report on the required programs. The $200,000 limit was established a number of years ago; required responsibilities have increased vastly since then, particularly with the passage of P.L. 94-142.

Recommendation:

Increase the amount of federal monies that can be spent for program administration to $300,000, or obtain State appropriations and approval for 3-4 additional Division of Special Education professional positions. This request was in the Commissioner's budget for 1978-79 and removed by the Governor. Efforts were made to include this request during the 108th Session of the legislature and failed.

Issue:

2) "Free appropriate public education" (Sec. 4(a) (4) (18) P.L. 94-142) is defined to include preschool education, yet this is not mandated in Maine. Federal regulations excludes the provision of services if contrary to state law.

Recommendation:

Clarify in federal regulations the fact that preschool education is not a required portion of "free appropriate public education" as defined if preschool education is not mandated in state law.

Issue:

3) The February 1st child count requirement conflicts with the State's statutory April 1st pupil census, necessitating three separate counts

each year.

Recommendation:

Make the second annual child count coincide with the April 1st pupil census practiced in Maine and a majority of other states.

Issue:

4) The State has no written references to a goal of providing a "full educational opportunity to all handicapped children" nor a timetable for this, except in its federal plan amendments; federal explanations of the relationship between the "full educational opportunity goal" and the "free appropriate public education" requirements only confuse the issue.

Recommendation:

Eliminate the requirement that the State must have a goal of providing full educational opportunity to all handicapped children ages birth through twenty-one. To state that a State may be totally committed to implementing this provision, and in compliance with the Act, but may never achieve its goal, serves no purpose.

Issue:

5) The State Department of Educational and Cultural Services has no statutory jurisdiction over any other State agencies, yet Sec. 612(6) P.L. 94-142 requires that all educational programs for handicapped children administered by any other State or local agency be under the general supervision and standards of the State Educational Agency.

Recommendation:

See Section IV a and Amendment D.

Issue:

6) State practices concerning involvement of parochial school children in special education programs "assisted or carried out" under P.L.

94-142 are not well defined in any document; efforts to obtain clarification from federal officials concerning Sec. 613(a) (4) (A) P.L. 94-142 have been unsuccessful.

Recommendation:

More clearly define in writing the required degree of involvement of parochial students in public special education programs and services.

Issue:

7) State procedures for the development of regional ("consolidated") applications and programs are contained within general education statutes of Maine and not within its special education law, regulations and guidelines.

Recommendation:

Add to State regulations detailed provisions for the development and operation of consolidated plans and programs, rather than relying on general education statutes; revise federal regulations to make discretionary at the SEA level the decision as to whether districts below the $7,500 level need to be consolidated.

Issue:

8) Interdepartmental coordination (primarily with the State Department of Human Services and the State Department of Mental Health and Corrections) for the purposes of special education is fairly effective at the State level through an Interdepartmental Coordinating Committee. However, while both of these departments operate with decentralized, regional administrative offices and staff, the Department of Educational and Cultural Services operates no intermediate educational units (other than the regional secondary vocational education centers); as a result field level coordination between representatives of the three

departments is frequently less effective.

Recommendation:

Develop SEA plans for regional administration of special education and related services; use increased staff/administrative resources, if allowed, to fund regional operations with supporting LEA flow-through funds providing remaining funding.

Issue:

9) State resources and practices do not permit educational plans for all exceptional children to be developed or revised at the beginning of each school year. For children already enrolled, plan reviews and revisions will have to be spaced throughout the school year.

Recommendation:

Revise federal requirements so that annual plan review and revisions will be accomplished at the beginning of the year "to the extent practicable." (See Section VI and Amendment G).

Issue:

10) State resources and practices cannot guarantee the provision of special education services to profoundly handicapped and/or previously unserved children unless some of the funds available to the SEA under P.L. 94-142 are available for inservice education of existing staff.

Recommendation:

Allow federal funds to be used for inservice education when deemed necessary by the SEA to accomplish the timelines of the "free appropriate public education" requirement.

Issue:

11) The State has neither procedures nor resources to collect the detailed information and statistical data required by Sec. 121a. 124 Federal Regulations.

Recommendation:

Provide additional resources (manpower) for the collection of the required data.

Issue:

12) State practices and regulations conflict with the requirements Sec. 121a. 514 Federal Regulations concerning surrogate parents. The Department of Human Services case worker assigned to a state ward is already responsible for the protection of the rights of that child. Assignment of a surrogate parent would bring to three, the number of adults with conflicting legal and emotional responsibilities and obligations for the exceptional state ward - the natural parent (particularly in the case of voluntary commitments) the case worker, and the P.L. 94-142 surrogate parent.

Recommendation:

Permit the surrogate parent of a state ward to be the case worker assigned to that child by the Department of Human Services (as presently described in State regulations). (See Section IV b).

Issue:

13) Sec. 121a. 503 Federal Regulations require that independent evaluations be conducted by a person who "does not routinely provide evaluations for the State." Scattered resources and sparse populations will make this requirement impossible of execution.

Recommendation:

Revise federal requirements so that the independent evaluation will be conducted by another agency "to the extent practicable."

Issue:

14) State practices concerning emergency placement of children who represent a danger to themselves or others, or who substantially interfere with

the education of other children are in conflict with Sec. 121a. 513 Federal Regulations.

Recommendation:

Provide for the emergency placement of children pending completion of the appeal/due process procedure.

Issue:

15) State practices and resources make it unlikely that Division of Special Education activities will have much impact on the personnel development or inservice education of "regular education personnel who serve handicapped children" as required by Sec. 121a. 382 Federal Regulations.

Recommendation:

Revise federal requirements to realistically reflect the fact that Special Education inservice activities can only be offered - not required of - to regular education personnel.

The amendments offered and the issues facing Maine are designed to create a workable program. P.L. 94-142 pursues a valid goal but also reflects compromises made during its passage which are not workable or beneficial to handicapped children. The anomaly of a Federal "assurance" of full service with inadequate financing must be resolved. If it is not, the result will be widespread litigation and a further deterioration of state-Federal relations in a field where harmony and cooperation are essential.

Thank you.

Appendix-1

AMENDMENT A (1),

FEDERAL AUTHORIZATION

Section 611(a)(1)(B) is hereby stricken and the following language inserted in lieu thereof: "(B) For each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, 40 percentum of the average per pupil expenditure in public elementary and secondary schools in the United States, except that no state shall receive an amount which is less than the amount which such state received under this Part for the fiscal year ending September 30, 1977."

AMENDMENT A (2),

FEDERAL FUNDING RELATED TO

STATE OBLIGATIONS UNDER PL 94-142

Section 601 is amended by adding a new subsection (e) as follows:

"(e) Nothing in this Title shall be construed to require a state or any local education agency in such state receiving assistance hereunder to assure that a free appropriate public education as defined in section 602(18) will be available for all handicapped children within the state between the ages of three and twenty-one in any fiscal year in which the state does not receive a grant under this act equal to the number of handicapped children aged three through twenty-one, inclusive, in such state who are receiving special education and related services multiplied by 40 percentum of the average per pupil expenditure in public elementary and secondary schools in the United States."

Appendix-2

AMENDMENT B

CONTRACT AUTHORITY

1.(a) Section 601(c) is amended by deleting the phrase "...to assist states and localities to provide for the education of all handicapped children,"

(b) Section 601 is further amended by adding the following new subsection at the end thereof:

"(d). The sums made available under Part B of this Title shall be used for making payments to the states which have submitted and had approved by the Commissioner of Education, state plans as required under Section 613 of Part B."

2. Section 611(g) is hereby deleted and new subsection (g) is inserted in lieu thereof which shall read:

"(g) From the sums appropriated for any fiscal year, the Commissioner, except as otherwise provided in this section, shall pay to each state which has a plan approved under this Part, the maximum amount to which it is entitled according to subsection (a)(1). Upon the reporting of the number of children under subsection (a)(3) for purposes of subsection (a)(1), any appropriations available for payments under this section shall be deemed obligated."

3. The first sentence of Section 612 is amended to read: "In order to receive assistance under this Part in any fiscal year, a state shall demonstrate to the Commissioner that the following conditions are met:"

Appendix-3

AMENDMENT C,

CHILD COUNT

Section 611(a)(3) is hereby amended to read:

"Section 611(a)(3) The cumulative count of handicapped children receiving special education and related services for one or more reimbursable handicapping conditions during the first school week of February in the fiscal year preceding the fiscal year for which the determination is made."

AMENDMENT D,

STATE AGENCY SUPERVISION

1. Paragraph (6) section 612 is amended to read as follows:

"6(a) The State shall require the state educational agency to exercise general supervision over the educational programs of all handicapped children regardless of the state or local agency involved, unless contrary to state law, whereupon:

(1) The State shall designate an agency which shall be responsible for assuring that the requirements of this Part are carried out.

(2) The State shall set education standards which are applicable to all educational programs for handicapped children administered by any state or local agency.

(3) The State shall designate an agency which is empowered to assure that all educational programs for handicapped children administered by any State or local agency conform to the standards established in subsection (a), paragraph (2).

(4) The State shall designate an agency which is empowered to resolve disputes between two or more State or local agencies over the division of responsibility for assuring all handicapped children a free appropriate public education.

2. The concluding phrase of the first sentence and the second sentence of section 614(d) are amended to read as follows:

"The State educational agency shall take such action as necessary, consistent with State law, to assure the provision of special education and related services to handicapped children residing in the area served by such local educational agency through the use of the payments which would have been available to such local educational agency under this Part.

AMENDMENT E,

DUE PROCESS PROCEDURES

1. Section 615(b)(1)(B) is amended by inserting after the words "intermediate educational unit" and before the word "involved" the word "directly."

2. Section 615(b)(2) is amended by inserting after the words "such agency or unit" and before the word "involved" the word "directly."

3. Section 615(c) is repealed.

Appendix-5

4. (a) Section 615(c) is deleted.

(b) Section 615(e)(1) - delete final sentence.

(c) Section 615(e)(3) is amended to read as follows:

"(3)(A) During the pendency of any proceedings conducted pursuant to this section, the child shall remain in the then current educational placement of such child, unless the State or local educational agency and the parents or guardian otherwise agree, except that the State or local educational agency may temporarily remove the child from the then current educational placement if such agency determines that retention of such child in such placement would unreasonable affect the education of other children; (B) If during the pendency of any proceedings conducted pursuant to this section the child is applying for initial admission to a public school, the child shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed."

AMENDMENT F

WITHIN-STATE ALLOCATION

1. Section 611(b)(1)(B) is hereby amended to read:

"50 percentum of such funds shall be distributed by such state in accordance with a uniformly applicable formula to local educational agencies and intermediate educational units in such State which meet such requirements as the State may establish to carry out the purposes of this Title, for use in accordance with the priorities established under Section 612(3)."

Appendix-6

2. Section 611(c)(i)(B) is hereby amended to read:

"except as provided in paragraph (3), 75 percentum of such funds shall be distributed by such State in accordance with a uniformly applicable formula to local educational agencies and intermediate educational units in such State which meet such requirements as the State may establish to carry out the purpose of this Title."

3. Section 611(d) is repealed.

AMENDMENT G,

COMMINGLING AND SUPPLANTING

1. Section 613(a)(9) is repealed.

2. Paragraph (2) of subsection 614(a) is amended by deleting clauses (B) and (C) in paragraph (2), and by placing a period in place of the comma at the end of clause (A).

(c) Section 615(e) is further amended by renumbering paragraphs (2), (3) and (4) as parapraphs (1), (2) and (3), respectively.

AMENDMENT H,

INDIVIDUALIZED EDUCATION PROGRAM

Section 602(19) is hereby amended by adding the following phrase at the end thereof:

"provided that such a statement and the process of its development shall not be construed to be a contract for the services described."

RESOLUTION

MAINE STATE BOARD OF EDUCATION

July 21, 1977

WHEREAS, the Education for All Handicapped Children Act (P.L. 94-142) is now law, and

WHEREAS, the Education for All Handicapped Children Act (P.L. 94-142) goals can only be achieved by amending the statute, and

WHEREAS, the U. S. Office of Education, Bureau of Education for the Handicapped has promulgated proposed rules and regulations concerning the administration of P.L. 94-142, the Education of All Handicapped Children Act, and

WHEREAS each of the states and the local school districts of this country have a direct interest in the final rules and regulations which will be submitted to the Congress, and

WHEREAS, the implementation of P.L. 94-142, its rules and regulations will have serious consequences on the administration of programs for exceptional children.

NOW, THEREFORE, BE IT RESOLVED that the Maine State Board of Education supports all the amendments to P.L. 94-142 presented by: National Association of State Boards of Education, National Conference of State Legislatures, the National Council of Chief State School Officers, National School Boards Association, National Governors Conference and the Education Commission of the States to Senator Jennings Randolf, Chairman of the Senate Subcommittee on the Handicapped and Representative John Brademas, Chairman of the House Subcommittee on Select Education on February 17, 1977.

BE IT FURTHER RESOLVED that the Maine State Board of Education strongly encourages the United State Office of Education, Bureau of Education for the Handicapped, to publicize widely the final regulations, soliciting comments concerning these final rules and regulations from groups such as, National Association of State Boards of Education, National Conference of State Legislatures, National Council of Chief State School Officers, National Governors Conference and Education Commission of the States and other groups interested in implementation of programs for handicapped children.

Senator HATHAWAY. Our next witness is Mr. Kevin Concannon, director, Bureau of Mental Retardation.

STATEMENT OF KEVIN CONCANNON, DIRECTOR, BUREAU OF MENTAL RETARDATION, DEPARTMENT OF MENTAL HEALTH AND CORRECTIONS, AUGUSTA, MAINE

Mr. CONCANNON. Senator Hathaway, my name is Kevin Concannon. I am the director of the State Bureau of Mental Retardation. I am pleased to have the opportunity to be here this morning, to appear before the subcommittee to provide information on the impact of Public Law 94–152, from the perspective of those of us who are most directly involved in the provision of care and services to the mentally retarded and their families.

Public Law 94–142 and Maine's own right to education law, which preceded the Federal legislation, are undoubtedly landmark pieces of legislation in furthering the cause of adequate provision of care to the mentally retarded and developmentally disabled.

In Maine, there are currently somewhere between 20,000 and 22,000 school-age youngsters receiving special education as a result of these two pieces of legislation. Approximately 5,000 of those 20,000-plus students are developmentally disabled or developmentally delayed.

Both Federal and State legislation were supported by parent groups and professional groups, urging more adequate provisions of free and appropriate public education services to special-needs children.

As the responsible State official for services to the retarded, both in the community and at our State residential facilities, I am certain that the impact of these right to education laws has resulted in a considerably reduced requirement for institutionalizing the population.

In fact, I can think of no more important legislation passed in the last decade that has had a more profound effect on improving services in the community to school-age special needs children and their families.

As in all such pieces of legislation which reflect a major shift in social policy—and in this case, an improvement in our social policy—there are areas which need to be addressed after we have had the opportunity to observe the legislation in action.

This morning, I would like to briefly bring to the attention of this subcommittee four areas for consideration by the Congress and HEW and specifically this subcommittee, for future attention.

These four areas are suggested as areas in which the existing legislation may be amended and strengthened.

First, there is a need to provide support and assurance of training of regular classroom teachers in the needs and expectations of the special-needs child whom they may encounter within the confines of the regular public school.

Currently, while we have stepped-up training of special education teachers in the State—and I expect the same is true throughout the country—we have mistakenly, I believe, paid insufficient attention to the training and orientation of other teachers in the public schools, who may not have direct classroom responsibility for special education students, but who nonetheless should have an awareness, a sensitivity, and a professional understanding of these children and their needs.

Second, there is a growing awareness on our part of the inadequate number of training sites in the country for teachers of the severely and profoundly impaired.

Typically, teachers graduating from our special education training centers in this State and in other States have most generally been trained to deal with the moderately and mildly impaired.

We have not had the same quantity nor quality of training for teachers of the severe and profoundly impaired, and I believe that this warrants special attention and perhaps incentive in future legislation to respond to the dearth of training sites for the severe and the profoundly handicapped.

Third, it has been long recognized that parents of special-needs children have much to give by way of knowledge, interest, and involvement in the development of their child. In a time of history when, sad to say, growing numbers of public educators are chagrined and frustrated by the collective disengagement by parents from the public education process, I believe in a most particular way this is an area or concern that needs to be addressed for parents of the retarded child.

In particular, parents of special-needs children have a great deal at stake and a high degree of interest in assuring that they are working directly with the schools who are addressing the educational needs of their child.

Unfortunately, there are no current collective opportunities for parents of these children, other than on an individual basis, to assist the school and to assist educators in meeting the needs of the child.

I would suggest that consideration be given in future legislation to encourage the development of parent advisory committees to local schools for children with special needs.

Analogous to the title 1 ESEA, parent advisory groups already established as a precedent through Federal legislation, I believe such a development would greatly enhance the communication between parents and educators of children with special needs and would considerably reduce the anxiety felt by parents, particularly when their child's educational needs are being met through a large public school system, through which they feel limited ability to influence policy.

Related to the above, we have seen some indications in Maine whereby in particular the moderately impaired child's educational needs are increasingly being met through the public school system.

In several isolated instances, the conversion from private school programing for these youngsters to public school programing have left parent groups with feelings of isolation, of disenfranchisement, of impotency in being able to influence the course of events in the provision of educational services for these children.

I believe Public Law 94-142 could greatly assist parents by strengthening their rights to collective involvement in the process of conversion of education programs from private schools to public schools where that is appropriate, and such rights would parallel and complement their individual rights already granted in the legislation.

Such a process would provide greater assurance of communication and dialog and would serve as an early alert system for educators of potential areas of concern that need attention. Most importantly, it would reduce the current anxiety felt by parents in this regard.

Related to the above, there should be a requirement in public law that when children are moved from one setting to the other, be it from a more restrictive environment to a less restrictive educational environment, there should be a concomitant assurance to parents and teachers of the maintenance of effort and the maintenance of quality of services.

Some examples that come to mind are children who have need for continuing physical therapy when the child is moved into a public education setting from a so-called private school. We have seen instances where such physical therapy needs have not been addressed once the child was moved. This has created obvious disappointment and disillusionment on the part of the parents.

Fourth and finally, I believe we have increasingly come to recognize that in general, schools are anxious to attempt to meet the needs of the special-needs student, but frequently do not know how to go about providing for such needs.

There is a systemwide need in this State for increased and ongoing training for the persons, both public educators, parents, and professionals, who participate in the development of individual education plans or, as we know in this State, the pupil evaluation team process.

Our workers have found through contact with large numbers of schools that frequently the school, while it wishes to do what is right for the child, is ill equipped because of lack of knowledge on how to identify a prescriptive educational program for the child.

One of the major reasons for this current inability is the unmet need for increased attention to the dissemination of information and skills to members of pupil evaluation teams. I would urge that any future amendments to Public Law 94–142 incorporate this as an area of incentive.

In summary, I wish to say that 94–142, coupled with our parallel State legislation, has been a most positive development for the provision of education to special-needs persons. It is landmark legislation for assurance of rightful care and is working.

However, as is stated above, there are some areas that need attention, and I would hope that in future deliberations, this committee would see fit to take these recommendations under serious advisement.

I wish to thank the committee this morning and Senator Hathaway, for allowing me to present the above thoughts. I would be most happy to attempt to respond to any questions.

Senator HATHAWAY. Thank you very much, Mr. Concannon. You might be interested to know that the Appropriations Committee, I think it is in the Senate, has appropriated an additional $10 million for inservice training. You will not get all of it, but [laughter] now, that is highlighted. I believe in the law, isn't it, about the ones that are severely impaired, that they get a priority?

Mr. CONCANNON. It is, but I do not think—it is difficult for me to describe it in the context of the law. I guess I am reacting to it from the reality of what we see in the State.

In our case—and it struck me when some of the previous speakers were talking about costs—my own sense is we can make no better investment, even if it is just on a cost-benefit ratio, strictly dollars, than making it in public education, because if we do not make it there, we will make it later on through the medicaid program or through SSI

or through other remedial programs. They are going to have some supportive effect on people, but really are not going to make the same kind of difference in their lives.

My sense in the training issue is that we have had some shift in this State, at the University of Maine in Farmington, and Bangor Community College, to address training for severe and profound, but it is far from adequate yet. And I think that is true right across New England, frankly.

Senator HATHAWAY. And on the third one, I think you could form parents' advisory groups now, under existing law, right?

Mr. CONCANNON. You may form them, but I think it absolutely should be required, because when we have talked with schools, they have come back and said, "Well, parents have a lot of due process under the individualized educational plan development process." There is a big difference between their individual ability to intervene on behalf of your child and what you get collectively. And I think one of the positive developments in the State—and I know that you were involved some years ago with a private school in the midstate area—one of the positive developments in the private school provision of care to these students has been the tremendously high parent involvement. That is one of the trade-offs that we are making I think mistakenly, when we shift to public schools. It is not going to come permissively. I think it has to be required.

I think it is a wonderful function that may frustrate all of us, but I think there is a very positive function in Federal legislation that says it must be done. People have a way of getting into line, coming into line.

Senator HATHAWAY. And the fourth one, are you talking about Federal dissemination of information?

Mr. CONCANNON. Yes; I am talking about some incentive in the law. For example, I think that is what John Kierstead was talking about. If he has a handful of people, and we have more than 100 local school superintendencies across the State, with all kinds of variations in the way they are formed, from unions to collaboratives of different kinds, and a State this large, one of the difficulties, in especially some of the rural school systems, is to know what to do. Once they get the diagnostic materials, they say, "What do we do now?"

They cannot be expected to have all the know-how localized throughout the State. I think we just have to step up that kind of technical assistance to them.

I see the likelihood of that coming. Personally, I think it is more likely it will happen with Federal support than I do with State support.

Senator HATHAWAY. Thank you very much, Mr. Concannon.

Our next witness is Mr. Bob Dowling, superintendent of schools in Berwick.

STATEMENT OF BOB DOWLING, SUPERINTENDENT OF SCHOOLS, BERWICK, MAINE

Mr. DOWLING. I am Bob Dowling, superintendent of schools in Maine school administrative district No. 60, headquartered in Berwick, Maine.

I am appearing before the subcommittee at the request of the committee, as transmitted to me through the American Association of School Administrators, the Maine School Management Association, and as chairman of the Maine Association of School Superintendents' committee on special education.

I would apologize for the brevity and lack of polish in my remarks. I received the request to appear here on May 4, and have, incidentally, been involved in 2½ days of conferences since that date, in the State capitol and elsewhere, on matters pertaining to special education, which I think somewhat illustrates a point that I would like to develop a little bit.

I think we school administrators agree wholeheartedly with the purposes and intents of Public Law 94–142, and the Maine law, L.D. 1956 and its predecessor, 965, that had the same general purpose.

Many of us have worked very hard for a great many years to accomplish these same purposes.

We do, however, have some practical concerns and problems we would like to bring to your attention.

In general terms, we think the laws, both of them, promise too much too soon. The law provides or implies the delivery of services that we cannot deliver, at least in the quantity and quality needed now.

Advocates of exceptional children and many Federal administrators are assuming that by September 1, 1978, or some other pertinent date, that all exceptional children will be receiving appropriate services. But this is not and will not be the case.

This implied promise or requirement will, and already has led to lawsuits and conflicts that require the diversion of time and resources from the delivery of the services.

More time is needed, and more money, if appropriate services are to be delivered to all handicapped children. We are concerned about what I call reverse discrimination—that is, the diversion of time, personnel, and resources from nonmandated programs to all children to the mandated programs for the handicapped; the provision of elaborate and time-consuming due process procedures for the handicapped that are not available to the nonhandicapped; the repeated statement in the law, "at no cost to parents or guardians," but no comparable provision for parents and guardians of other children.

We are concerned with the proliferation of guidelines carrying the force of law that are written in such a manner as to imply an antagonistic relationship between the local educational agencies and the handicapped or the Federal or State agencies, apparently with the assumption that the LEA's are not to be trusted in any manner or form, but instead, have to be forced in the greatest of detail, to perform the smallest task in relation to the handicapped.

We are concerned with the provision that requires handicapped children to be educated with nonhandicapped, as it seems to be interpreted by both State and Federal officials. This frequently results in inadequate programs for the handicapped in the local schools, instead of a good program, operated on a regional basis.

The concept of least restrictive environment is sound, but frequently works against the best interest of the handicapped child in an individual situation.

We urge that in writing or rewriting guidelines, close attention should be paid to the advice of those who must deliver the services. In other words, tell us by law what you want done, but let us tell you how to do it. We believe that this approach would lead to better delivery of services and greater cost effectiveness.

If it is the intention of Congress to consider revision of Public Law 94–142, we have some specific suggestions for your consideration.

First: Remove restrictions on the local educational agencies' use of flow-through funds. Currently, construction or renovation use is prohibited, and very, very frequently needed. The limitation on grants of under $7,500 works hardship particularly in a State like Maine, or anyplace with small school districts, of which we have a great many.

Second: Remove the term, "at no cost to parents or guardians." This, as it has been interpreted, is unfair to the parents and guardians of nonhandicapped children, who have to pay some costs.

Third: Rewrite the section on individual educational programs to make the requirements less stringent, so that our special services people can spend more time delivering services to children and less time to writing plans and completing paperwork.

Fourth: Rewrite the section requiring that handicapped children be educated with nonhandicapped children as a mandate and substitute a statement and an intent that they be placed in the best program for them, wherever or however it is located or organized.

Fifth: Please keep reporting and program reviews to a minimum.

Sixth: Eliminate the requirement for the filing of assurances—this is a minor annoyance, but every warehouse in Washington must be bulging with these certificates. We must obey the law—we recognize that. But if we do not, all the assurances in the world will not change anything.

Seventh: Cut procedural safeguards for the handicapped to those provided for all students. The continuous written correspondence with parents from their complaints to me personally in my own unit is annoying to them and frequently serves no useful purpose.

Eighth: Reduce due process and hearing requirements to those available to other students and their parents and guardians.

Ninth: Eliminate the statement that no hearing can be conducted by an employee or agent of the unit involved in the education of the child. This does not exist for any of the other hearings that the local educational agencies must conduct in many different areas for nonhandicapped children, and should not exist in this case.

Tenth: Eliminate the requirement for written or electronic verbatim record of hearings. This is expensive, unnecessary, and again, not provided for any of the other myriad of hearings that we have to hold, and

Eleventh: Eliminate the requirement that the child must remain in the current educational placement until all proceedings have been completed. These proceedings can take months and even years if the courts are involved and can lead to a very dangerous situation for the handicapped child and sometimes his peers.

Some consideration, we believe, should be given to cost effectiveness and the definition of educational function. Is it desirable to spend $5,000 a year per child for 18 years in the case of some profound mentally retarded children for whom no real education is possible; $12,000

a year for a 15-year-old violently psychotic child, with a zero prognosis for maybe 1 hour of education per week!

In closing, the State of Maine identified 9,300 handicapped children in 1973, 25,000 by 1976. The problem is staggering and will be extremely expensive.

While we believe that handicapped children are entitled to the same educational benefits as all children, we would hate to see the handicapped consume the resources, or too much of the resources, needed for the majority.

Thank you for the opportunity to appear before you on behalf of my colleagues.

Senator HATHAWAY. Thank you very much, Mr. Dowling.

I am appreciative of your saying that we ought to be patient. I think that one of the shortcomings that we have in the United States is we pass a law today and expect that it will be fully implemented tomorrow, and everybody is going to be saved by the day after tomorrow. And if we took a little more realistic attitude, we would probably get along a lot better.

With regard to the paperwork burden—because we hear this with respect to almost every Federal law that is passed—I would appreciate it if you and others here in the room could just document certain instances where paperwork is burdensome—and you probably have, but oftentimes we just hear the general criticism that there is too much paperwork. Well, undoubtedly, there is, but if we could get some specific complaints, undoubtedly, with the cooperation of HEW, we can cut down on the paperwork burden, because oftentimes it is unnecessary.

Now, on due process, do you think that parents of nonhandicapped children should have the same rights as handicapped?

Mr. DOWLING. Yes; or vice versa, if we provided the same due process rights for the parents of all children. I would judge that we would spend half our time following due process procedures, this time is now devoted to the kids, and I think that is where it ought to be.

The multiple hearings, the multiple notifications to parents—we get complaints about these involved procedures from the parents of the handicapped. We do not need this.

Now, you understand that I am speaking as a superintendent of 30 years' experience in the State of Maine. I have a rural district—in fact, they are almost all rural districts in this State—with 2,600 children. But we are not as remote from our parents and our kids as they may be in the city of Portland, with 10,000 students, or Boston, New York, and so forth.

Senator HATHAWAY. Yes; right. That is the real problem.

Mr. DOWLING. That is a good part of the problem. I can understand the necessity, possibly, for some of the detailed procedures and safeguards in a huge metropolitan system, but I do not think they are as necessary in our rural system. And that is not only true of Maine, because half the country is rural systems also.

Senator HATHAWAY. Of course, the trouble is that we have had a history of discrimination against handicapped children for many, many years, and I suppose the due process requirement, although it may be cumbersome, and probably we should streamline it, is necessary in some form in order to make sure that their rights to an equal education are provided.

Mr. DOWLING. I have no quarrel with the latter part of that, but we have established by the courts and by various legislative bodies, I think, adequate due process safeguards for all children and adults. And in this particular case, you have a special set that clearly discriminates against anyone that is not handicapped.

The point I made on at no cost to the parents is being interpreted by people to mean that the costs normally borne by a parent of a nonexceptional child, shall we say for a gym sweatshirt, cannot be borne by the parent of the handicapped.

We are forced to furnish transportation for the handicapped that we do not furnish to the nonhandicapped. My little district is paying $6,000 a year right now to transport one student—one student.

It is not that I resent either the money or transporting of that student, but I question whether we have the resources to expend $6,000 for the transportation of one student on the one hand, and at the same time not be able to provide a facility for three profound children on the other.

Senator HATHAWAY. Thank you very much, Mr. Dowling. I appreciate your suggestions.

Our next witnesses are Ms. Carol Lenna, staff, Developmental Disabilities Council, and Mrs. Carol Wyman, member, board of directors, Advocates for the Developmentally Disabled, Hallowell.

STATEMENT OF CAROL LENNA, STAFF, DEVELOPMENT DISABILITIES COUNCIL, AND CAROL WYMAN, MEMBER, BOARD OF DIRECTORS, ADVOCATES FOR THE DEVELOPMENTALLY DISABLED, HALLOWELL, MAINE

Ms. LENNA. My name is Carol Lenna, and I serve as staff to the Developmental Disabilities Council in Maine. With me is Mrs. Carol Wyman, who is a board of directors member of the Advocate for the Developmentally Disabled.

I am going to read some prepared testimony that is presented on behalf of the Developmental Disabilities Council and the Advocates for the Developmentally Disabled, and then introduce Mrs. Wyman.

This testimony is presented on behalf of the Maine Planning Council on Developmental Disabilities and the Advocates for the Developmentally Disabled.

The State Planning Council and the Advocates for the Developmentally Disabled exist under Public Law 94–103, to plan and advocate for the needs of those people in Maine who are mentally retarded, autistic, epileptic, and have cerebral palsy.

The State Planning Council considers all systems which impact on services for the developmentally disabled and works to insure that needs for the developmentally disabled population are incorporated in the various service delivery plans. When individuals and groups need organized intervention on their behalf, the advocates provide the protection and advocacy functions to insure this intervention.

The comments presented in this testimony address generally the implementation of special education from a statewide perspective and specifically the issues of preschool education and the least restrictive alternative.

Public Law 94–142 for the first time sets to rest any question of the legal right of a handicapped child to an equal educational opportunity, regardless of the degree of handicap.

It is a law which advocates for the handicapped have long awaited. The law and regulations have carefully laid out service provisions to meet the needs of handicapped children, of setting priorities for the services, and guaranteeing parental participation in the process.

If Public Law 94–142 as a law has a weakness, it is the equivocal language regarding education for handicapped below age 5. A great deal of time, money, and effort have gone into research and study of the effects of early programing for young handicapped children. It has been proven beyond any doubt that the earlier a handicapped child is diagnosed and a program begun, the greater the potential development for that child.

Indeed, it has been proven that delaying appropriate programing for some handicaps, such as cerebral palsy, create complications which are irreversible by the time the child is 5. The early developmental years must be used to the fullest advantage for handicapped children.

To deny this early intervention puts the child, parent, and indeed, the school, in a constant game of catchup, in order to make up for the important learning time lost during his critical developmental years.

It appeared originally the Congress would assure the right to early treatment for handicapped children through 94–142. However, allowing States the option not to include these children in special education programs, if inconsistent with present State law, denies handicapped children that crucial early start in those States which do not serve 3-, 4-, or 5-year-old children.

This action by Congress has made a statement to these States, which are embroiled in the controversy surrounding education's responsibility to the preschool handicapped child.

In Maine, the struggle to include services to young, handicapped children in the State's special education law has been going on for years.

Local school districts on the whole have been the group most persistent to supporting this inclusion, even on a permissive basis.

Again, it appeared that Congress was responding to this need through incentive grants. The early education incentive moneys, while an unacceptable compromise to the inclusion of 3- to 5-year-olds, created the expectation of additional funds to assist in the growth of preschool services. To discover that funding was approved at only one-tenth the level authorized in the law has been a difficult blow.

Only 2 out of 159 school systems in Maine are currently serving handicapped children younger than age 5. Public Law 94–142 preschool incentive funds provide these two systems the ability to generate a total of about $1,200. At an average per-child cost of $1,000, that is very little incentive, especially when you consider that these children are being served entirely with local dollars because they cannot even be counted in the pupil count for general educational subsidies, let alone special education subsidies.

Local schools are presently being begged, cajoled, and bribed into participating in preschool services for the handicapped. Efforts are being made to create a cooperative interagency structure to disperse the funding and overall responsibility for these children.

The impetus for starting programs even under this arrangement has come from everywhere but the local school systems. Knowing what we now know about the benefits of early intervention for handicapped, it seems inconsistent to continue to allow their exclusion from services at a very early age.

Judging from experiences in Maine, it seems apparent that the direction must come from the Federal level.

A second area of concern regarding Public Law 94–142 is the definition and clarification of least restrictive environment, as it relates to the severely handicapped child.

It is clear that the intent of 94–142 is the integration of the more substantially handicapped child into more normal educational settings, and not to turn public schools into dumping grounds, but to provide a continuum of services to allow schools to move toward the thoughtful, planned integration of these children into the educational system.

While the intent of the law seems clear, schools and parents are receiving mixed signals on its interpretation. When asked for direction from the Bureau of Education for the Handicapped regarding least restrictive environment, the answer most commonly heard is the most appropriate placement.

If a school has no program for severely handicapped, then it is true that an institution, private day placement, or private residential placement is most appropriate. Unfortunately, this has resulted in little growth of appropriate programs for the severely handicapped in the public sector.

There is essentially a completely separate educational system for severely handicapped children in Maine. Almost all severely handicapped and a large number of moderately handicapped children are being served in segregated, private facilities, and public institutions.

Public school personnel have had little involvement with these children and have little knowledge of their needs. The responsibility for development of individualized education plans for these children has even been relinquished in this private sector.

In most cases, parents are not forcing the issue. They do not see the local schools as being able to provide an appropriate program for their child and are not interested in making test cases of their children, to force a program for the sake of having their child in a public school.

This attitude of pitting least restrictive against most appropriate, from State or Federal officials, has resulted in a maintenance of the status quo in the Maine school systems in their decisions regarding educational placement of severely handicapped children.

Beyond the interpretation of least restrictive environment is the issue of the future of education for the severely and profoundly handicapped child in Maine, generally.

There are currently no programs for personnel preparation at the university level for teachers of the severely handicapped nor, to my knowledge, any plans.

There is currently no State certification for a teacher of the severely handicapped. There is more concern for which department is responsible for paying for the child than on the child's need.

State education department officials publicly question their responsibility to educate these children. Public school personnel do not pres-

ently have at their disposal the support mechanisms to gain the necessary expertise and understanding to begin developing the programs for the severely handicapped.

Local schools will continue to avoid taking on the responsibility as long as State and Federal officials themselves will not assume the leadership role to guide and assist in this undertaking.

State education agencies, the Bureau of Education for the Handicapped, and the Congress, must reexamine the original intent of Public Law 94-142 and carefully determine the assistance and leadership still necessary to assure the reality of more integrated, normal educational settings for severely handicapped children.

Maine is progressing slowly as it strives to build a special education system. Although the numbers of children receiving special education have increased sharply since 1973, program development and service availability is still more directly tied to cost than need.

The division of special education seems unsure of what its role is to be—whether that of quality control, compliance officer, consultant, accountant, or advocate.

Cooperative working agreements for children served by more than one agency continues to be an unsettled issue. Preparation of qualified teachers is inadequate. The university system and the State department are not coordinating resources and efforts to tailor university programs to meet defined needs.

A variety of programing alternatives does not exist in the majority of local districts. Children are fit into programs, not programs to fit children.

There is a severe shortage of personnel to provide ancillary services, such as occupational and physical therapy, adaptive physical education and speech therapy.

Consultation and technical assistance for local schools is minimal. Parental involvement in program development is minimal. Parent training in due process rights and procedures is almost nonexistent. Program review by the division of special education of programs at the local level has stressed administrative procedures more than quality and appropriateness of programs.

Regular education teachers are confused and threatened by added responsibilities of special education laws. There are no organized, consistent, inservice training opportunities for these teachers.

State funding for other than direct program costs has never been appropriated. The division of special education is understaffed, with 90 percent of those employed being supported by Federal funds. There are no State training funds available for inservice training of either regular or special education teachers.

This list of concerns is not meant to deny that there has been progress in special education in Maine, but to point out that there is much to be done before the full impact of equal educational opportunity is felt by all handicapped children.

There is no question that there has been a tremendous growth in services to handicapped children. There are, however, still many frustrations as we continue to strive for better quality of services.

Partnerships must be formed between parents, the educational system, the university system, and the State bureaucracy. Dollars cannot be the first criteria for service. That services for handicapped children will continue to improve, there is also no question. That there are dedi-

cated, interested, and well-intentioned educators willing to continue working to provide these services, there is no doubt.

We must guarantee them the support structures to assist them as they proceed. With growing disillusion of education in general, it is increasingly critical that special education build its bridges carefully, providing assistance when it is needed, support when it is called for, and guidance when it is necessary.

Additional funds will be necessary to meet the demands of assistance; strong leadership to provide the support and guidance.

I would like to just make a comment now before questions. Originally, Mrs. Wyman had planned on speaking as a parent of an autistic child, from a very personal perspective. As the hearing continued this morning, she began to be very intimidated by the professional testimony being presented—which I think typifies the role that we have thrust parents in by not providing them with the additional support, with the training, with the advocacy that is necessary for parents to really understand their role in providing programs for their children or in assisting schools in providing programs for their children, assisting them in making choices.

Mrs. Wyman has agreed—and I think, Senator Hathaway, you have some notes there about her testimony—and she has agreed to answer questions, again, from the perspective of a parent, with very little knowledge about Public Law 94–142, but very concerned about the appropriate educational future of her child.

Carol?

Senator HATHAWAY. Mrs. Wyman, do you want to say anything, or just answer questions? You have an autistic child, and you say that the child was not received as well as you thought?

Mrs. WYMAN. Luckily, we have been able to move right along very good. We just seem to have fallen into situations—they did not exist, but when we got there, all of a sudden they were available. It has really been great, but it has been quite a struggle. Where she is at now, she just had a PET evaluation done on her and they feel that she is socially ready for a kindergarten program and at a readiness level for reading and math. I never believed this was going to be possible. We were just hoping to train her so we could keep her in the home, and now we find out that she can be educated, very much so.

And after 2 weeks of being totally excited and anxious, there was quite a bombshell dropped. That is, what she is going to have to face when she goes to that school.

Her own specific special class, that is going to be great. But she is going to be taking lunch programs with other children, she is going to be on the playground with other children. She needs peer models desperately. She is not going further socially in her school, because they are like her. So she stays there.

She needs other children, normal children, to learn from. She copies. That has been the way for her to learn. And I do not know if I can live with her heartache. She has such an emotional problem—there is a level that is so highly intelligent that she knows what is happening around her. She knows that she is hurt, and it comes out in frustration. And she attacks herself bodily, physically, hurts herself very much so, and can strike out at other children.

This is what I am afraid of. I do not care to see her hurt, or anyone else. But the teachers of the other children, also—their children are

going to go back to their own rooms and ask their teachers about these disabled children, and they have got to have the right answers for them. And I think that even the children at kindergarten level, if they are taught about these children with problems, that they handle it much better than adults, as a matter of fact. I have seen that with the children in my neighborhood, that the kids 2 years younger than her are marvelous; it is the other ones I am having the problem with.

And I really think if it is put in the school system, and if they become a part of it, if they are told that they can be a help, they would love that.

Senator HATHAWAY. That is a good suggestion. You are saying that we ought to have inservice training for the students, as well as the teachers, in effect.

Mrs. WYMAN. Definitely.

Senator HATHAWAY. Your daughter is 7?

Mrs. WYMAN. Yes.

Senator HATHAWAY. And she has been in the system how long, getting special training?

Mrs. WYMAN. In the Berwick home training program for 2 years.

Senator HATHAWAY. And you think that really her optimum environment would be to mix with the other children, provided the teachers and the other children understood her problem?

Mrs. WYMAN. Yes; This is recommended by everyone that has been involved with her. She is moving, but the behavior problems hang on because she is not out of the situation. It is all around her.

So rather than just to put her with the older age group that are doing the reading and the math—they go up to age 15—rather than do that, she really needs the social from normal people; she really does.

Senator HATHAWAY. Well, doesn't the system recognize that, the school?

Mrs. WYMAN. I am sure that they all recognize that, but they do not have what they need to deal with it.

Senator HATHAWAY. They are not really trained and equipped to do it.

Mrs. WYMAN. Right, yes. I have been to parent meetings with my other children, and they do not even know what I am talking about when I say "autism." When I first went to a doctor, his diagnosis was that she was spoiled. Even he was not educated into that particular behavior problem.

Senator HATHAWAY. Mrs. Lenay, what can we do about this particular problem? I mean, isn't this just a question of utilizing the Federal and State funds to provide better services and training? I mean, there is nothing we can do in the law as far as changing it to——

Ms. LENAY. I think there are two things that can be done. The first is very close attention to the personnel preparation sections of the regulations and assuring that university systems and State departments within States very clearly identify what their problems with training are. The sense is that Maine has really not done that very adequately yet. They are still training teachers who are predominantly trained to deal with mildly to moderately handicapped children.

I think that we are not spending the time and effort that is necessary to provide in-service training for regular classroom teachers to assure

that there is just a basic understanding of a myriad of handicapping conditions and, again, what the regular classroom teacher's part is in the entire education law.

To some extent, I see that as increased funding for personnel preparation which, as you mentioned——

Senator HATHAWAY. Yes; We had mentioned before, the additional $10 million, we hope.

Ms. LENNA. This is a serious problem in Maine right now, in terms of special education, because as Mr. Kierstead mentioned earlier, training funds in the department of education are all Federal, the part D funds under 94–142, and they are being used presently to support three staff people at the division level—two professional staff, one clerical staff—with very little left over for the actual field training that would be necessary.

There have been no State funds for special education training. The university level is not involved to a great extent in outreach for in-service training for special education teachers.

Senator HATHAWAY. Thank you very much for your testimony, both of you.

Next, Mr. Otis Thompson, who is president-elect of the Maine Teachers Association.

STATEMENT OF OTIS THOMPSON, PRESIDENT-ELECT, MAINE TEACHERS ASSOCIATION

Mr. THOMPSON. Thank you, Senator Hathaway.

I would like to point out also that I, as well as being president-elect of the Maine Teachers Association, I am a fifth grade teacher in the Portland school system.

The members of the Maine Teachers Association are in full support of the concept of Public Law 94–142. In most of this last year and prior to that, the elected leaders and the staff of the Maine Teachers Association have been monitoring the implementation of this law.

There have been meetings with groups of teachers throughout the State, and we have sent leaders and staff people to conferences on both State and national levels.

We have found from the meetings with teachers that there are some concerns and frustrations with the law, even though we do support it in concept.

They basically center around six broad areas. The first one is the increased demands on teachers' time may be providing less quality of education of both handicapped and nonhandicapped children; inservice education for all teachers, not just special ed, is not happening.

Large numbers of handicapped children are not being identified, and in some cases, teachers are told not to identify these youngsters. Class sizes are not being reduced significantly, if at all, and school facilities are not being modified, and instructional materials are not being provided.

The time involved prior to the actual contact that the child may need most of the school year, limiting meaningful involvement with the child by the classroom teacher and the special ed teacher.

Today, we have four other practitioners from the classroom and from our schools, who will be presenting their concerns based upon

these six broad areas. They are representatives of urban areas, rural areas, classroom teachers, special ed resource teachers, reading specialists, and guidance counselors. They will give you a first-hand look at the problems from the perspective of those people who are primarily responsible for bringing the intent of the law to the children.

In closing, let me reemphasize this point. Teachers are concerned and frustrated with 94–142. They are concerned because the children who need and deserve the help mandated by this law are not getting that help to the best extent possible.

As you listen to their testimony, I am sure you will understand how they feel and how they feel it can be improved.

Senator HATHAWAY. Thank you very much, Mr. Thompson.

Charles Sanders?

STATEMENT OF CHARLES SANDERS, TEACHER, MILLINOCKET, MAINE

Mr. SANDERS. Thank you, Senator.

I would share with you some information about myself before beginning my testimony, so that you can understand some of the perspectives from which I will be speaking and some of the threads that will probably run through my testimony.

I have had 14 years of experience in the public schools, 10 of which have been as a school counselor. In addition, for the last 9 years, I have served on the executive committee of the Maine Teachers Association; I am a past president of that organization, and currently represent that organization on the National Education Association board of directors.

In addition to that, I am a taxpayer and a parent of three children who are participating in the public schools.

A lot of my observations and comments will come from the practical experience, dating back to the times when Maine was implementing State legislation, the intent of which was similar to Public Law 94–142.

One of the dilemmas that became clear in that legislation had its source in the fact that the teachers who were going to receive the then called mainstream kids back in their classroom were given some assurances initially that, in fact, when that happened, that they would have supportive services made available to them, primarily in the form of consultation with, and help from, the special education teachers in planning and implementing in fact the appropriate educational plan.

That legislation simultaneously recognized the reality that there would be some kids whose handicaps would be so severe that, in fact, implementation into the mainstream would be, in fact, not totally possible, and that, in fact, some of those students might well be so handicapped that they would, in fact, spend much of their day in a special ed or resource room setting.

This presented an immediate logistical problem, in terms of how is that, in many cases, single specialized teacher in a building going to, in fact, be in two places at once; how is she going to maintain the operation of the resource room, and at the same time serve as a consultant to work with all of the teachers who are recipients of all of the handicapped kids in that given school.

So that clearly is a staffing problem of immense proportions and has relationship to and implications for funding of the bill. And it is my contention, based on what I have seen in practical experience, that clearly, the intent is in the right direction, but the underfunding is so classic that the staffing needs to achieve the goals of the bill just have not been met. That would be my first observation.

That one, I was comfortable enough to paraphrase. By the way, Senator, a lot of my colleagues and friends would be amused at your invitation to paraphrase my comments. I am an incurable rambler, and my paraphrasing gets longer than the prepared speech, so at this point, I am going to deal with a couple of points, and I will use prepared summaries.

Several people have alluded to the problems of time inherent in this particular bill. It has imposed tremendous demands on teachers' time, and I would reiterate some of those, the more obvious ones.

There are demands on the teacher to confer with other teachers in order that mainstream programs can be coordinated with the IEP for handicapped children.

There are demands on the teacher to attend IEP conferences—in our State, we call them pupil evaluation team meetings.

There are demands on teachers to do massive amounts of paperwork involved in the IEP development, paperwork associated with student evaluation, parent notification, and other kinds of reporting.

There are demands on teachers to confer with parents, demands on teachers to participate in inservice education programs, and finally, demands on teachers to teach children, to prepare for classes, and do all the paperwork connected with that instruction.

The whole area of school scheduling, I assert, lags far behind these new demands on teachers' time, and in no way does it accommodate these new demands that are being placed on them. It simply is something that is expected to be achieved within existing structures, within existing schedules, within existing times, and it is not realistic.

I think that the Federal and State departments of education are going to have to provide some aggressive and effective leadership and funding to insure that new scheduling strategies are developed in our schools to accommodate these new thrusts or they just simply are not going to be accomplished. It is going to be logistically impossible to complete the missions inherent in the legislation.

I would speak briefly about testing issues as I perceive them, related to Public Law 94-142. Personally, I think there is considerable irony in the fact that the leading proponents of the kind of legislation we are talking about here today were in many cases parents of kids who had these kinds of problems. And, while they were advocates of the legislation that was passed to provide an education for those students, they also simultaneously would have been opponents of extensive labeling of children.

And yet, inherent in the very procedures for implementing the bill we are talking about today, the end result is an extensive use of labels, some of which in my experience are quite stigmatizing and potentially dangerous.

I think, too, that the education community—and I accept my share of the blame along with the rest of the people and constituencies in the room—but I think that collectively, the education community may

have created the false impression that the state of the art of testing is equal to the challenges inherent in Public Law 94–142.

Personally, I question whether that is true or not. In fact, I do not think it is true, and I think there is considerable need for development of new and more appropriate instruments of a diagnostic nature to measure all the different kinds of handicaps that we now are being expected to serve.

Group administered, standardized norm reference tests must not be used in the implementation of 94–142. I think it says that in the legislation.

However, I think in many cases in initial screening, though, that they are used, and perhaps in many cases, inappropriately.

I think that there is considerable awareness that the standarized, norm referenced instruments have great potential for discriminating against members of ethnic minorities. I think that has been so well publicized and pursued that there is quite an awareness of and sensitivity to that particular factor.

However, I do think that what happens up here in the Northeast. I think our conscience level on issues of that is perhaps moved or shaped a little bit by the reality that, by and large, we do not have large numbers of ethnic minorities as a percentage of our population, and so we tend not to think of that as being an issue.

However, one point I would like to make is that we do have large numbers of our school populations which come from nonstandard English-speaking homes, and also, too, we have large numbers of our students who come from low-income background.

My point would be that these two groups are among the two most discriminated against by group administered, norm referenced, standardized tests.

There is a lot of good testimony from a sociologist by the name of Dr. Jane Mercer, pointing out that typically, standardized, norm referenced instruments in this country have been guilty of having very Anglicanized, if you will, norm groups on which the data is based. That is to the detriment of people from ethnic minorities, people from low-income backgrounds, and particularly, people from nonstandard English-speaking backgrounds.

The issue of in-service training has already been spoken to several times this morning. I would simply say that there seem to be substantial reasons to question the provision of adequate financial support for the vast amount of in-service training that is going to be necessary to achieve the intent of the legislation. I think that is clear to all of us, and I would not propose to elaborate anymore on that.

One thing that occurred to me as I began to develop this testimony was that the implementation of this kind of legislation, both at State and Federal level, has substantiated the need for diverse curriculum development in our schools. I would assert, by the same token, that we live in a pluralistic and democratic society. The needs of students in our public schools are also diverse and pluralistic.

Implementation of Public Law 94–142 has highlighted the need for diverse curriculums to meet the needs of students with different handicaps. The whole movement has lent support to the findings of the National Academy of Education Committee on Testing and Basic Skills, in which they concluded that—and I quote—

Any setting of statewide minimum competency standards for awarding high school diploma is basically unworkable, exceeds the recent measurement arts of the teaching profession, and will create more social problems than it can conceivably solve.

end of quote.

I would summarize by making two main points.

It is my conclusion that the greatest challenge facing our legislators at all levels is to stop passing morally meritorious policies, guidelines, or legislation unless the commitment is there to provide funding sufficient to make these policies, guidelines, or legislation fiscally feasible.

I believe nothing has contributed more to undermining the confidence in public schools than the raising of expectations that go unrealized due to insufficient funding. We see that over and over again with legislative attempts to address issues facing education.

I would say let us fund Public Law 94–142 in such a fashion that its mission can be accomplished. I feel that it could do much to restore the confidence of teachers and taxpayers.

I als believe that Public Law 94–142 has also highlighted the need for a Cabinet-level Department of Education that would have the capacity to establish a more coherent and effective program of Federal education.

I believe my information is correct, Senator, that you are supportive of legislation of that nature, and I know the administration has a proposal before Congress relative to creating a separate Department for Education.

Senator HATHAWAY. Yes; thank you for your endorsement of that. Write a letter to the Bangor News, will you?

Mr. SANDERS. I have done that a couple of times in the past——

Senator HATHAWAY. They criticized me last week for supporting a separate Department of Education.

Mr. SANDERS. I always found it does not pay to argue with people that buy their printer's ink in a barrel.

Senator HATHAWAY. The same barrel they have their head in, I think.

Mr. SANDERS. Touché.

Senator HATHAWAY. On the funding, we had, I think, $12 last year——

Mr. HALLORAN. It was about $12 in fiscal year 1975, prior to the passage of Public Law 94–142, even though the appropriations are not up to the level of authorization.

Next year, it will be $143, Federal dollars per student in each of the local districts. So it is coming up.

Senator HATHAWAY. You have to realize, Charlie, that the authorization committee is not the same as the appropriating committee, although that was the case a hundred years ago or so, and maybe it ought to go back to that.

Mr. SANDERS. I understand.

Senator HATHAWAY. And the appropriations committee looks at things a little bit differently than the authorizing committee—although we have a very sympathetic person in Chairman Magnuson, from Washington who, as you know, has been a friend of education for many, many years. But he does not always get his way.

Mr. SANDERS. Sure. I am feeling a little compulsion to try to respond to a question that you raised earlier, right off the top of my

head and without credentials, other than based on what I have seen in 10 years in public schools.

You asked a question—mind you, I am not an administrator, so I cannot talk in those terms, perhaps, in terms of budget, or with credibility—but I would say, just off the top of my head, based on my experience, in terms of you asked a question about what percentage would you say that the bill is underfunded, in terms of actually being able to achieve its mission.

Senator HATHAWAY. Right.

Mr. SANDERS. I would say conservatively, 50 percent underfunded to achieve its mission. And that is based on just things that I see around our school that are lacking, in terms of when we have really tried to implement that law to a good faith level.

Senator HATHAWAY. Then, you would agree somewhat with Mr. Kierstead, that we should have funded it the other way around—started with 40 and tapered it down?

Mr. SANDERS. Yes; on that particular point I would agree with him. He and I can talk about the other points on which I might not agree with him.

Senator HATHAWAY. But not taper down to zero, as we are in career education, for example.

Mr. SANDERS. Of course, I mean, there are just too many demands on LEA's and on State funding.

Thank you very much for the opportunity to testify.

Senator HATHAWAY. Thank you very much.

Mr. SANDERS. By the way, I have worked in schools so long, and I am perceiving you as instructing, and I have to tell you my assignment was not achieved. However, you will be receiving my written testimony within the 15-day deadline.

Senator HATHAWAY. OK. Thank you.

Ms. Rae Bates, who is a teacher at Sherman Station.

STATEMENT OF RAE BATES, TEACHER, SHERMAN STATION, MAINE

Ms. BATES. Good morning.

Senator HATHAWAY. Good morning, Ms. Bates. Nice to see you.

Ms. BATES. Thank you.

I am a teacher of English in grades 9 through 12, and have served for 2 years on our pupil evaluation team that serves our district.

In summarizing the testimony that I sent to the subcommittee offices, I would like to reiterate what virtually everyone has mentioned here this morning, and that is the problem of funding.

In small rural districts, such as the district that I come from, with approximately an enrollment of about 1,000 students, we are faced with one person who works 2½ days a week who is qualified to test our children.

Therefore, when we have been reviewed by the State department on our special educational program, we have found ourselves grossly lacking, because we are not even able to identify. We are in tremendous need of funds.

We have found ourselves receiving Federal seed money to implement three programs in our district, but since we are financially unable to even initiate the programs to begin with, when the seed dollars were

gone, our program was dropped, because as I understand the Maine school funding law, it prohibits the reimbursement of special educational money from these seed dollars that we receive from the Federal Government.

So programs have been discontinued, and that raises the tremendous question of what happens to children who receive services for 1 year—maybe on the outside, 2 years—and then have to be totally left hanging.

The second tremendous problem is teacher training. Teachers are not trained in identifying the needs of these children. As an English teacher, I was not trained in special education. I was not trained in learning disability. I was not trained in identifying dyslexia, and all types of various and sundry problems that we have in recent years become acquainted with.

And I see a need in several ways, therefore, to implement programs where teachers are trained to identify needs, and money to carry out the law.

Money. And I do not know where the dollar comes from. People continually complain about their taxes, and I do not know where the money will come from, but I know there is none.

Senator HATHAWAY. There is a State surplus, isn't there?

Ms. BATES. Maybe they would take care of the debt that our district found ourselves in.

Senator HATHAWAY. In addition to the money, though, aren't there just some unique problems in rural areas——

Ms. BATES. Yes; and because of these rural areas, our children have to travel such great distances to be served, and I see a problem with having eventually to hire one teacher to serve one particular child's needs. We are going to be receiving one profoundly retarded student into our system, and we would be therefore required to hire one person who was going to teach that one child. And of course, what happens to the rest of the children in our classes?

Senator HATHAWAY. So that the cost per student is much higher in rural areas than it would be in the cities.

Ms. BATES. Yes; we have no such facilities as, for example, Portland has, for our children to go. We have one child located in the Saco area who therefore is 4 hours' drive from his home and must live in a residential area provided by the system.

Senator HATHAWAY. Well, now, how about any other system, like Holton, that is nearer to you than Portland, that might provide some of these services?

Ms. BATES. The closest that we would have for TMR or EMR students would be 13 miles one way and 30 miles another direction. So our students all must travel, and they must travel extensive miles to get to any area for emotional problems.

Senator HATHAWAY. Like how far?

Ms. BATES. Portland.

Senator HATHAWAY. Portland is the closest to Sherman Station? How about Bangor?

Ms. BATES. As I understand, not to be housed and treated. There is the Bangor testing facility, for testing. We have one child who has emotional problems who is living in Saco, going to Sweitzer.

Senator HATHAWAY. So your main complaint is money, as we have heard quite a few times this morning.

Ms. BATES. Yes; many times, because we are a district that has found ourselves a quarter of a million dollars in debt at the end of last year, which is a tremendously unique problem, I hope. And therefore, we have trouble meeting the needs of the students currently enrolled.

What will happen if, say, at the end of 3 years, our TMR and EMR students come back to be mainstreamed in the regular classroom? There is no place for them to go; there is no one to meet their needs.

And teachers in our system are finding ourselves, through our PET meetings becoming tremendously aware of the children who have needs, but being able to do nothing about it.

One resource room in one of four elementary schools. There is no way to meet the needs of our 1,000 students. We are not even able to identify them. It is remarkably pathetic.

Senator HATHAWAY. Do you think a distribution formula ought to be tailored to give more money to rural areas?

Ms. BATES. Yes.

Senator HATHAWAY. Based on transportation and so on.

Ms. BATES. Right. If we could even have the money that we receive from the Office of Education in Federal seed dollars be reimbursable—we have lost three programs just on that alone.

If you are not able to start a program, how are you ever going to be able to pick it up?

Senator HATHAWAY. Good point. Thank you very much.

Ms. BATES. Thank you.

Senator HATHAWAY. Next, Ms. Marjorie Knight, a teacher in the Portland system.

STATEMENT OF MS. MARJORIE KNIGHT, TEACHER, PORTLAND, MAINE

Ms. KNIGHT: First of all, I want to say that I am not among the specialists in the learning education or the special education program. I am a reading specialist, and I would want to point out from the beginning that they are not the same thing.

However, I am involved doing all the diagnostic work at a Portland junior high school. Collectively, today, I prepared quite a few things, not knowing specifically until last Monday what I was to do.

I was informed last Monday that I was to put it under the problems of the PET process in an urban situation or an urban area.

And I have tried, by getting feedback from the staff, the guidance counselors, the assistant principal, members of the PET team, to find collectively what we determined, at least in the city of Portland, to be those problems. But I think, due to lack of time, there is no need for me to go into that, but I would like to have you pass these out in a few minutes.

I would just point out three things they identified. The first is, in a larger city situation, due to, I think, the attractiveness of the services which are provided and low income housing, we do get a good load of students who would be referral candidates. So the magnitude of all those things involved increase numerically within the city limits—more referrals, more IEP's and so forth.

Second, one of the problems in a city is that the continuity in the programs is oftened threatened. We have a higher rate of absenteeism, of truancy, and what I call transiency, moving not only from outside city limits into the city, but inner city moves.

And once you have spent considerable time in programing a child and going through all the preparatory means, it is discouraging to see them leave the community, and it is also an adjustment problem, even when they go from one school situation to another, oftentimes.

And the last which was identified was family attitudes. More than likely, a great many of the parents come from the lower socioeconomic status, and they have a sort of what we call a down-on-schools attitude, and they hestitate communicating with the schools, and oftentimes the communication is unsatisfactory. Beyond that, you can read over my notes.

Second, what I had understood from the beginning I was to do today was to get a general idea from among the classroom teachers their complaints and compliments or concerns with regard to the PET process.

So I sent out a survey to classroom teachers, special ed teachers, and so forth, and got information back, which I compiled into sort of a summary.

And again, I have copies of that, which I understood might be helpful. So if anyone wants to pass these around, I am going to just allude to them.

[The information referred to follows:]

94-128 O - 78 - 6

GENERAL PROBLEMS OF "REFERRAL"

Summary of PET Team Member Records

Time involvement

Numerous teachers have stopped referring students, being overwhelmed by paperwork. Would rather work directly with students.

Many teachers have seen PET referral forms and IEP's from other communities that clearly meet needs of PL 94-142 and resent/wonder why Portland's paperwork is so much more exhaustive.

Generally, PL 94-142 (as it's being interpreted in Portland) makes extraordinary new demands on teachers in terms of time (meetings) and work (forms); nothing has been done to provide more time for people who get involved in the PET process.

Time lag

Time involved from original referral to action on student's case -- much too long -- teachers feel that in the time required for data gathering and scheduling meetings kids get lost (some drop out, transfer, some referred in fall and not placed till following fall).

Lack of appropriate training

Many teachers resent the fact that while Spec. Ed. personnel have special training and buy special materials to work with Spec. Ed. students, they are expected to work with these kids with no training and often lack essential materials; also class size is an important factor (difference between learning limit on Spec. Ed. class size and teacher's class load).

Parent's involvement

Some teachers resent fact that parent opposition can override a program if PET makes program recommendations and parent does refuse permission for evaluation or placement. They figure- what's the point? Why did we go through all this?

Special Ed. teacher issues

The demands on us are extreme. In the final analysis we write all the IEP's, gather all the data, do all or almost all the assessment of kids. This is a significant change in our jobs since we are still full time classroom teachers.

Teachers who are sending students on to high school or junior high must meet with receiving teachers to work jointly on IEP's! Jr. high special ed. teachers are caught in the middle, since we have to meet with our feeder schools and the receiving high school.

Ms. KNIGHT. I wondered as I sat here what I would delete and what I might add, and I made the decision that today, rather than giving my own testimony, which I have given to Mr. Hathaway's office, I would try to be the voice of the voiceless, because I think some of their major concerns need to be repeated. Some are redundant, and some have not been brought up at all.

But you will see on the summary that one of the major complaints—and I certainly did not give you quotations from all those that were submitted—that one of the things has come up here over and over again today is the time involvement.

I do not think that the teachers that I got feedback from resent the time involved. There are things about that time involvement, however, that they do resent. One is, in the large amount of paperwork, the redundancy, they feel, does take undue amount of their time when they have submitted certain information, to find further sheets asking for repeated information which has already been submitted; and second, that no time has been provided within the school hours to complete any of the paperwork of the PET meetings, the extra time which is necessary to put in on their part. And the second was due to time again—they resent that once they have made a referral that so oftentimes it is very unsatisfactory to first find the long lag in time until the child actually receives those services.

I have had several experiences with that, and in one case, where I submitted the information and the referral in October, got the information back immediately which was required; inquired in April, and nothing had been done. This is in my personal testimony—to discover that only when the child was brought up for consideration in retainment, a seventh grade boy, that he had been filed and was what I would call a dead file in the drawer. There had never been any further handling.

So there are flaws. They are human errors, I suppose, some of them, and not flaws with the process. But when you have done so much work and preparation, these things discourage you.

Also on the time, because of the time involvement you will find on the second, where I have given teacher quotes—and I think this is a serious flaw—many of the teachers neglect in any way to refer students for it. They do not want to become involved—at least, this is what we have gotten as feedback in the Portland system. And some have, of their own testimony here, say "I will not do the paperwork. I do not get involved, so I overlook the needs of the child." That in fact is what they have said, because of the followup work and the commitment on their part.

I think it should be a professional commitment, and we should do it with both a commitment and a compassion. It is our responsibility; however not all teachers take that view.

I think the third item—and that which most people feel the most unfortunate—they feel ill-prepared. They do not feel that they have adequate training. This probably has been the most repeated thing and oft-said thing, that we do not feel that we are equipped to handle it. Where are the inservices, in fact? Where is the information? Where should it be forthcoming? And there is sort of total confusion about some of the things which they feel they should be as professionals informed about.

Parents' involvement—a few have thought that this was, in one person's words, a hamstring; it was a handicap; that in some cases, when much work has been done, the parent has said no, would not sign, and the parents have been caused delays or have not wanted the services. And so some have responded in that way.

And I would hope that you would take time to read—I will not go over it right now, due to time—what the special ed department has said, and because this is supposed to be my testimony, I am going to say three things from a reading consultant's point of view.

I am not unlike most reading consultants, I think, in most districts—and we do get together and swap notes at many sessions. I have an accountability for a total school reading program. I have objectives in my own school program which I am responsible to achieve during the school year. And yet, I feel a great, improportionate amount of time—I accept it, I know that is part of my job—but because of the paperwork and the numbers in a school of my size, I cannot complete the deadlines for special ed and hope to meet my own deadlines in my reading program. And so, my reading program goals, over and over again, month after month, have had to take a back seat. I have simply had to say I cannot do both, but this is expected Friday, this has got to be in on Monday. And it has been discouraging to me, because I am the one that my job is going to reflect on me. I come through for the special ed, but I wonder how it makes me look in some instances, and I am very concerned about that.

As a result, there are nights when I am spending long hours no one knows about at home, and afternoons, and mornings before school, and I know that other reading consultants share my plight. It is certainly not unique to me.

One other thing which I feel, for my own sake of credibility—and this is not unique to me, I have discussed it with other reading consultants—in my own feeling of integrity, I am a nucleus on the PET team, and I am expected to be at each and every meeting. However, I have not at any time been informed about any changes in the special ed process. I would like to answer those questions.

I did, for my own sake, send to Augusta when I first went to King Junior 4 years ago, and I have referred to something which they sent me, and when I refer to them, someone will tell me, "That is obsolete. Don't repeat that." Someone will say something at a PET meeting, and I say, "Where did you get that information? Should I have received it?" I do not know where it should be forthcoming, to whom I should go to get this information. But I am not a little peeved at the fact that it is not forthcoming.

And I do not know who is responsible. I have inquired. I cannot get it from my guidance counselor. I have gone to my principal. I do not know whether it should come from the State or the city, but I feel if I am part of that team, I should get the information. It is part of my responsibility. I would like to answer knowledgeably to the questions which are asked of me.

One other thing, for my sake. I think there is lack of clarity in some of the terminology and expectations. When I go to a PET meeting and make certain recommendations, there has never been anything in writing provided to me, and I have done a lot of good reading, and

yet, I found out that it differs from one school district to another, evidently.

There seems to be a dichotomy in philosophies. I am not sure when I make a recommendation at PET whether I should expect—and I have talked this over with my special services people, so I am getting to know, but it took me some time, because it differed from case to case, I discovered—whether they should act as a support system. That is, if I send a seventh-, eighth-, or ninth-grader for special ed services, do I expect them to act as tutors? Is this what they should be doing as resource people, as special educators, consulting teachers, or can I expect services as I would expect in a remedial situation, so that their basic skills can be expected to be improved?

Am I going to send a child there in the seventh grade with, say, A, B, C skills at third reading level, and have him supported for 3 years, and come out with A, B, C skills at third reader level; or, is he going to be given the kind of support so that he can go back and perhaps get better grades, participate, and have a more meaningful experience in the content area room?

And my own preference is—and this is why I am posing the question—my own preference is that he come out with improved skills so that he can be more independent. The supportive crutch or the supportive system will end at some point, and, as I say, this is my philosophy. I would like to see his basic skills improved. So it causes me some concern, if I am his reading consultant, to make recommendations at a PET meeting.

These are the kinds of clarifications I also think classroom teachers need to get. So I am going to boil it down to allocation of time from the survey which I have taken; clarification and communication, I feel and they feel, is lacking.

And one point, which I am in preference in reading my own testimony going to, because it overwhelmed me, startled me and concerned me. One of the men, I think it was Mr. Sanders, spoke of the need for better devices for testing, and he strongly emphasized them. I agree with everything he said.

I teach a class at the University of Maine, at the graduate level, and discuss this because many of them are teachers in the secondary school systems. One person said, "May I write my testimony for you, please? Will you leave me unidentified?" And I said, "Well, sure, it will probably add to whatever we are giving as testimony," and it relates to what Mr. Sanders said about the devices of testing, because it leads me to believe we should question the qualifications of the testers.

So I am going to read a person who has felt so concerned about it, she has left her school system for 1 year and is in the graduate program, working toward her masters as a reading specialist, as a result of this 2-year experience in an outside school system. I am going to read it as she wrote it.

I was a building P.E.T. tester. It was given to me as an honor. A substitute was hired whenever I needed to test. I had not had one testing course in my background, so I took one testing course immediately. During the first year, I tested over 50 children.

My principal knew less about the reading tests than I did. I paid for the testing course out of my own pocketbook, but people laughed at me because I was so conscientious. I enjoyed the testing, but the write-ups were long, and

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even with a sub, I had to take the write-ups home at night, which took away from my class time preparations.

I attended the parent-teacher-principal conferences whenever asked, and people relied on my opinions. I was considered an authority and respected.

Children were categorized, promoted, on my recommendations. But I did not feel like an authority, as my background was so limited. I was offered this for one year, and I tried to resign the next year, but was told quietly that my contract read "extra duties as assigned", although I had been told—or maybe asked—to perform this honor for one year.

[She underlines.] Only trained professionals should test. I tried, but I realized that I was not really qualified. I really cared about the children, and would gladly have tested, because it was enjoyable, if I had been qualified.

When I stated my reason for wanting to resign, it caused great feelings. Other P.E.T. teachers in other schools were as qualified as I, but it did not bother them. We were a select, prestigious group. We even got taken out to dinner.

I stayed on for the second year, and I felt sad for the children who were being tested by unqualified people. The next year, the process was changed, or, thank heaven, I would probably be P.E.T.-ing in the building.

I tried to make the point about unqualified people testing, deciding children's futures or failures, and I do not blame anyone especially. State laws are passed, but funds should be provided to train people.

My superintendent is a nice man, but was evidently caught with untraind people or short notice—I do not know which. But I ended up the P.E.T. teacher without qualification, and it simply was not fair to me or the children.

This leads me to question how prevalent this might be. We question the tests. I feel that we should question the testers' qualifications. And it magnifies to me the fact that the responsibility is given to a great many people to implement this program, and it emphasizes what everyone has said here today: That there is not enough training, and too many feel too inadequate.

Senator HATHAWAY. Thank you very much, Ms. Knight.

Dr. Helen Norton, a teacher at Auburn.

STATEMENT OF DR. HELEN NORTON, TEACHER, AUBURN, MAINE

Dr. NORTON. I am currently acting as a substitute for a special education teacher at a high school in Auburn. What I will be doing next year, I do not know. Hopefully, I will be doing much the same type of work.

In my paper to you and the committee, the question to be addressed regarding Public Law 94-142 concerns all Americans very deeply.

The legislation has long been needed and has had a tremendous impact on communities, families, education, children, regular classroom teachers, special educators, administrators, and local and State boards of education.

As the law stands, it is very comprehensive. There are needs which must be met in order to realize the full potential of this legislation.

Special educators often find conflict between Federal and State commitments to the law. Too often, the State recognizes the need of the local educational agency for programs related to low incidence handicaps, as well as the more obvious, but have not been able to provide reimbursement.

This is particularly true for States or sections of States sparsely populated. It might be beneficial to more strongly encourage regional programs with qualified personnel and staff to function in a capacity of consultation, identification, inservice, and provision of services to children.

There is some disenchantment with the individualized educational plan for each child. However, such a plan is necessary and serves a number of purposes.

If the IEP format is concise yet comprehensive and meaningful, it helps a teacher recognize and deal with a child's needs.

Regardless of whether or not parents are aware of their children's problems in school, some parents are upset when presented with a registered letter informing them of a pupil evaluation team meeting.

The need to officially notify parents of their right to attend these meetings is recognized. In many instances, it has been much more effective to either visit the parents to explain the process, or to converse with them by phone.

It has been suggested that other official instruments might be devised to deal with this situation. Guidelines for this law are at times difficult to interpret. There tends to be a looseness of regulations, particularly regarding a handicapping condition such as a learning disability. The scope of this disability is expensive and can encompass many varieties.

Special education classes and resource rooms can be filled by this handicapping condition alone. Children with reading problems, for example, could better succeed with a specialist in reading, rather than assignment to a resource room.

There is need for intensive inservice programs for administrators and regular classroom teachers. Problems can arise when regular or mainstream teachers do not understand why a special education teacher would like to enter the regular classroom.

The regular teacher with a special education student has a supportive resource in the special education staff. The special education teacher can help with alternative materials, tests, suggestions on handling of special students, and reinforcing concepts taught.

The regular teacher often is not fully aware of the role he or she plays in a pupil evaluation team meeting. They have as much input and responsibility for the child and the recommendations as any other member of the team.

Classroom teachers are often frustrated, and rightly so, by the time lapse between a referral and placement of a child in a situation where help can be given.

It is unfortunate that classroom teachers often do not feel free to consult or request suggestions from the special education staff regarding ways of helping or working with a potential special education student.

Not all classroom teachers can cope with special education students in the room. When a teacher is willing and interested in working with these students, it should be taken into account that additional time and attention will be required to help the student achieve his fullest potential.

Under these circumstances, when a number of such students are assigned to a class, the class load should be reduced proportionately. There should be some consideration for the grading of these students by development of guidelines supported by the administration.

Perhaps the greatest injustice at this time is that programs exist for some handicapped children, but not all. Very few programs K through 12 are offered in the public schools in Maine for hearing impaired, visually impaired, and orthopedically impaired children.

Comments have been made that a school for the deaf provides for the hearing impaired, and the visually impaired are likewise cared for.

Public Law 94–142 was not designed to remove students from residential schools, nor is there any desire by the public schools to do so. However, the law does provide an alternative form of education for those interested and capable of functioning in a public school setting.

The public schools probably have many unidentified students with mild to severe handicaps not being serviced by teachers trained to work with them.

A cursory survey which I conducted in the Auburn schools revealed 55 students with mild to severe hearing losses, experiencing academic difficulties. Inadvertently, 10 to 12 students with mild to severe vision problems were also found.

These students have a right to an education geared to meet their needs. They also have a right, as mandated by Public Law 94–142, to the services of personnel trained and certified to deal with their specific handicaps.

A proposal was submitted to the State to provide programs on a regional basis for these specific handicapping conditions. As of this writing, neither the proposal nor any part of the proposal has been funded.

Public Law 94–142 is an excellent law. Its greatest need to make it work in the classroom is full implementation in its entirety, with its full supportive components.

The committee's interest and concern is gratifying and greatly appreciated. Thank you.

Senator HATHAWAY. Thank you very much, Dr. Norton. You know that the law does encourage regional programs?

Dr. NORTON. Yes.

Senator HATHAWAY. But it does not mandate them, of course.

Dr. NORTON. No. But so far, it does not seem to be functioning in that manner as yet.

Senator HATHAWAY. In addition to more funding, what else could we do, as far as the Federal law is concerned?

Dr. NORTON. I think that, as has been said today, the inservice of the classroom teachers, making sure that we have certified teachers in the various handicaps, basically, the funding to do the job that the law was meant to do.

Senator HATHAWAY. Fine. Thank you very much.

Miss Elsie Lindblom, principal of the Governor Baxter State School for the Deaf.

STATEMENT OF ELSIE LINDBLOM, PRINCIPAL, GOVERNOR BAXTER STATE SCHOOL FOR THE DEAF

Miss LINDBLOM. Senator Hathaway, Dr. Joseph Youngs, superintendent of the school, has submitted a letter with his views to your office, and I would like to review some of these at this time.

In terms of implementing Public Law 94–142, those of us who have severely hearing impaired children in our special schools are concerned that the interpretation of the law will prompt educators and parents of hearing impaired children to assume that the law intends for those children to be educated in the mainstream of the public school system.

This, of course, is referring to the term, "least restrictive environment." Although there is no place in the law which specifically mandates mainstreaming per se, the idea of the least restrictive environment implies this concept.

We are concerned that an overly hasty decision to remove students from residential programs or special schools will plunge them into a setting that will prove traumatic and disruptive to their growth and development, particularly if these settings are unable or unprepared to provide for them.

The nature of the handicap of deafness, almost without exception, suggests that special programs with highly qualified and trained teachers of the deaf may be essential if the children are to have an appropriate education.

A critical consideration is if the needs of these children can be met and reinforced in a regular classroom setting. Specialized schools and classes provide optimum, individual attention for each child, recognizing that the handicap of deafness requires individualized planning because of the variables and degree and nature of the hearing loss.

In regard to the social accommodation of deaf children, a select environment in which deaf children are able to grow and develop among peers and persons capable of carrying on wholesome, social communication is pertinent in establishing any program for deaf children.

Deaf children could be swallowed into the public school program and find themselves frequently outside of the mainstream, observing activities, but rarely participating in them. Among their deaf parents, they are able to have an appropriate social stimulus that will motivate them to become wholesome, normal citizens of our society.

Another aspect of 94–142 is the funding procedure. Questions have been raised regarding the phasing out of Public Law 89–313 of the Elementary and Secondary Education Act, in favor of funding through 94–142.

This would impose a serious hardship on our residential schools serving handicapped children. At this time, this aspect of the law provides specific grants to the Governor Baxter State School for the Deaf. These grants are based on the population numbers of the school, and the funding has been most generous in making it possible for the school to offer deaf children unique services that cannot normally be available through legislative funding.

In the instance of our school, this gives us additional personnel and other programs and equipment for our children to supplement their program. If this provision is to be phased out in favor of 94–142, it is to be hoped that stipulations will be made for residential schools, such as Baxter School for the Deaf, so they may continue to enjoy the special benefits derived from Federal funding.

Another provision of the law involves the development of appropriate teaching personnel to handle handicapped children through inservice training.

It is the experience of us engaged in the education of deaf children that teachers trained on this basis—now, this is "inservice training"—while often devoted and dedicated to their responsibilities, and in many cases quite efficient, fail to measure up to the professional standards and requirements that are needed for this work.

In order for local school districts to set up programs for hearing impaired deaf children, it would be essential that highly qualified teachers of the deaf be recruited.

These teachers must have the appropriate professional training and be capable of being certified by their professional organization, which is the Council of Education of the Deaf.

Most of the teachers who are teachers of the deaf also are certified in teaching regular classrooms. They have had more than 6 hours of credit beyond their regular teaching. Most of them have been involved in an extensive graduate program that includes over 30 hours in such aspects as audiology, speech communication, specific language reading skills, and other skills needed to be effective teachers of the deaf.

When a deaf child is placed with an untrained or an unqualified teacher, the results become usually a matter of babysitting for that child in the public school setting.

It is a major concern that handicapped children, particularly deaf children who are integrated into the regular public school programs, may flounder and fail to achieve optimal success unless there is a careful monitoring of the programs. This kind of monitoring system must be done by trained personnel who are accepted and recognized by professionals in the field as qualified to examine and offer constructive criticism and to make suggestions, followup, and recommendations.

Deaf children also need to be engaged in an ongoing carefully structured school program. A special school for deaf children provides optimum service for them and becomes in fact the most appropriate environment for these deaf children.

The feeling that such children attending these schools are being institutionalized is quite prevalent. Residential schools for the deaf are institutions only in the term that they are boarding schools. They are no more institutions than the best private schools in the community.

Two observations need to be made with regard to what is obviously a difficult period of transition. One is, the cost of a residential school is expensive and may entail ongoing capital investments in specialized equipment and residential facilities.

The other observation is that few communities have yet developed a flexible, comprehensive service system capable of meeting the needs of hearing impaired children.

The development of such services is also costly and may, in fact, prove more costly if services are to be duplicated in each educational setting.

The overly hasty reduction of residential population can result in a large number of deaf children being underserved or experiencing a traumatic, disruptive way of life and being placed in situations which are unable and unprepared to provide for them.

In general, the adequacy of service delivery to deaf children in Maine is contingent upon adequate funding for needed amplification equipment, special learning devices, and special personnel.

The quality of service is tied in closely to the degree of disability. The greater the hearing loss, the less chance for complete success.

The type and intensity of additional handicapping conditions also are factors to be considered when mainstreaming is proposed for any deaf child. Developing appropriate accommodations, both socially

and programwise for the deaf child within integrated groups requires serious supplemental individualized assistance.

Mainstreaming does not of itself provide equal opportunity. The critical consideration is if the particular needs of the hearing impaired individual can be met and reinforced within a heterogeneous educational system.

When individual attention is normal procedure, as in special schools and classes, it is wholely a matter of professional accommodation to each child. In group interaction, such as a public school classroom, it also involves the social accommodation of the group.

Thank you for letting us express our views on some of the aspects of Public Law 94–142.

Senator HATHAWAY. Thank you very much, Miss Lindblom.

Let me ask you, we have discussed this matter of the merger of ESEA and title I funds, and we are not going to do it until such time at least as 94–142 is equivalent to the same amount of money, and whether we will do it then or not, I am not sure, but it will not be until then.

Second, do you at the Baxter school prepare the students for going to the public school system?

Miss LINDBLOM. Yes; I would like to address myself to that for a few moments as to what we have been doing in the past. Mainstreaming per se is not a new term in the history of the education of the deaf in Maine. It has been going on for years, with children coming and going from Baxter to public school.

We have found out that the children who go to public school with the supportive services of our staff and the supportive services of the public school do fairly well. And, if I may give an example of some successful mainstreaming, our staff has been meeting with the public school staff of the school district where the child will be attending. We try to work with the language and speech therapist, the classroom teacher; our audiologist helps in the selection of the auditory equipment in the classroom if he is so asked.

We have used a system of visitations of the children in the special class at our school and the children in the class where the child is going to be mainstreamed.

We have had a series of followup meetings with the staff at both schools, to help in any problems that might arise. Usually, there are a number of ways a child can be mainstreamed—if the child, himself or herself, feel ready to do so. Usually, those children are quite successful and make a fairly good adjustment with supportive help from our school.

Senator HATHAWAY. Thank you very much.

The last witness is Mr. James Brewster, president of the Maine Association for Retarded Citizens.

STATEMENT OF JAMES BREWSTER, PRESIDENT, MAINE ASSOCIATION FOR RETARDED CITIZENS, SOUTH PORTLAND, MAINE

Mr. BREWSTER. Senator Hathaway, if you don't mind, I will stand; that forces me to speak a shorter time, and I know that everybody is concerned with that item.

The Maine Association for Retarded Citizens, along with the National Association for Retarded Citizens, have been working for this kind of legislation since 1950.

We 100 percent support this and champion this kind of approach to normalization of handicapped children in Maine and in the Nation.

However, one of our great concerns at the Maine level is the fact that some of the second- or third-level administration of this program—that is, lower than the State department of education and higher than the classroom teacher—have misinterpreted this law and the itnent to the extent that many people are being confused about the fact that all handicapped children must, as soon as possible, attend public schools.

This is not the intent of the law, this is not the purpose of the law, and this is not the stand that we support. The PET procedure, which is the backbone of this law, makes it crystal clear that the parent and the professionals involved with the program of the client will assign that client to the least restrictive environment. And that is the bottom line of our stand.

We of the Maine Association for Retarded Citizens feel that in many cases, many private schools are doing the best and greatest service to those clients now and for the foreseable future.

We accept and we hope eventually all private schools will be phased out and all children will be in public school. But the fact of life that we as parents understand most—and we have the concern not of the 5, or 3 to 20 period of a handicapped child's life, but we have the concern of womb to tomb. We have the concern of that client from birth to death. And we have the concern that that client get the best appropriate education to provide them the least restrictive environment for their whole life.

Therefore, we feel very strongly, and take issue with those today that have spoken in favor of decreasing parent involvement. We say it should be right on, according to the rules and regulations of the law as stated. We are 100 percent in favor of that.

We find that the best procedure for notifying parents is not by registered letter. We feel that every school system has a responsibility to make physical or verbal contact with parents of any handicapped, any emotional problem, or any other kind of problem that that child is having in school. And this is not to say just special ed. We believe any child that is having a problem, it is the responsibility of the administration to get to that parent, whether it be urban or rural. And we do not think it has to be by letter. We think this wonderful invention of Ford and Bell allows the communication to be made with a parent without using the mail.

Finally, Senator, to bring it to the final point that we would like to stress, we, the Association for Retarded Citizens, believe the major problem is funding and training of teachers.

We do not believe the teachers of Maine are ready, willing and, most importantly, able to handle the moderately and the severely handicapped children of Maine.

We understand that there is a very positive—and we agree—a very positive approach and programming for the educables. Our major concern is the trainables. Our major concern is those that are being deinstitutionalized, from Pineland. As you know, Senator, there are going

to be 16 new group homes in Maine this year; 100-plus new clients from Pineland will be out into the community to be educated in the communities. And these are the clients that we are concerned with that are best, in many cases, provided for educationally in private schools that are ongoing in those communities.

And we are very concerned that some of the middle echelon administrators do not understand, as you and I do, Senator, that the law does not require these people to be placed in the public schools, in any sense of the law. It requires them to be placed in the least restrictive environment and the most appropriate program for their individual advancement, and that is where we stand, Senator.

Finally, we believe that there should be mandatory education required for all teachers in the field of special ed, because as we see this developing down the road, 5 or 10 years, we see the need for every teacher in every classroom to be having minimum background in special ed, just as much as reading, writing, and arithmetic.

That is our stand.

Senator HATHAWAY. Thank you very much.

Let me ask you, do the schools in Maine require that in the teaching program, the University of Maine and others?

Mr. BREWSTER. No; they do not. They do not require that. And some of the problems, as far as training teachers is concerned, is that we feel this should be paid for through Federal funding, if you will.

The mandatory reeducation of the older teachers, to also require them to become involved in knowing and learning about the special clients in the communities.

But our most important concern is the fact that some people, somehow, have misinterpreted the law, to think that private schools must be phased out and all these severely handicapped be put in the public schools.

The first speaker today referred to Portland's Woodford School, for example. In Woodford School, we have several teenagers who are not yet toilet trained, who have to be physically helped in and out of that school. These are severely handicapped children. And we maintain, sir, that these children cannot, will not, and are not ready for mainstreaming at this point in time in Portland schools in any stretch of the imagination.

We also, of course, maintain that these deinstitutionalized students that are coming out of Pineland, in many cases the least restrictive environment might be their bed. And sometimes, some of the educational theorists do not recognize that fact of life that parents sometimes understand most.

We as parents want our children to be as normalized as possible. But that "sometimes," sir, is going to be very restrictive, depending on their handicap.

Senator HATHAWAY. Thank you very much, Mr. Brewster.

[Information supplied for the record follows:]

Senator HATHAWAY. Mr. Halloran?

Mr. Halloran is from the Bureau of Education for the Handicapped, Department of Health, Education, and Welfare.

STATEMENT OF BILL HALLORAN, BUREAU OF EDUCATION FOR THE HANDICAPPED, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, WASHINGTON, D.C.

Mr. HALLORAN. I think the only thing I wanted to say was that the dilemmas that are being described, especially the funding dilemmas and so forth, I think, have to be looked at in terms of a comprehensive commitment of Federal, State, and local dollars.

For example, one of the points brought up by one of the previous speakers was that Federal dollars are paying for about 90 percent of the administration of programs for the handicapped in this State. Certainly, the intent of the Congress was not that it be that disproportionate a commitment of Federal funds to administer a program in the State.

Also, the question dealing with the training of teachers. Are the Federal dollars the only perceived mechanism for supporting the provision of training for those people who need competencies to deal with the handicapped?

What is the responsibility of the State, the university system?

I think in summary, the hearing itself, today, was an excellent vehicle of communication. But I hope that that communication could be continued, the parents, the professionals themselves getting together. The recognition of the issues that came out today is the first and most important step in providing free appropriate public education for the handicapped.

The followup activities after the recognition are now the steps that would have to join you folks together to improve the services.

But basically, the congressional intent, the intent of our office, and I believe the intent of everyone here is that every child has a prognosis, and what are the best methods that can be applied to have every child develop to their furthest extent.

Thank you, Senator Hathaway.

Senator HATHAWAY. Thank you, Mr. Halloran.

I want to thank all of the witnesses and the others who have come here today. This has been very instructive for me, and of course, the record will be printed and will be distributed to the other members of the subcommittee, as well as to the full committee, and hopefully, we can follow up and do something about the recommendation you have made, particularly the funding.

And as I mentioned at the outset, the record will be open for an additional 15 days, so if you have written statements to submit, or you know anybody that would like to submit their statements, I would encourage you to do so over the next 2 weeks.

[Additional information subsequently supplied for the record follows:]

HUMAN RESOURCES
DEVELOPMENT CORPORATION

91 NORTH STREET
SACO, MAINE 04072

A Private, Non-Profit Corporation
TELEPHONE (207) 283-3764

May 12, 1978

Senator Hathaway
Washington, D.C.

Dear Senator Hathaway:

Although we were not invited to testify at the May 13th hearing in Portland, we would like to offer a written testimony for your consideration.

The Human Resources Development (HRDC) is a private non-profit organization which addresses itself to unmet rehabilitation needs of the handicapped. Its main concern at present is in advocacy. HRDC is a corporation made up of professionals wo are themselves handicapped and consumers of services for the handicapped. At present it is funded through donations and the CETA grants. Many of our members have worked within state educational systems for several years. These individuals have encountered numerous frustrations in obtaining services for handicapped children. We could give you many examples of these frustrations but we will confine ourselves to areas of greatest concern.

Although there are many programs for the retarded, schools have been very slow in providing services for the physically and emotionallt handicapped children as weel as children with learning disabilities. The Saco school system for instance has one L.D. specialist and one full time Speech therapist. This system is just now in the process of hiring a Special Education Coordinator. Teachers report a great deal of frustration in getting special education services for children who need them, parents have not been advised of their legal rights in a way that they can understand, and the professional have not received much training regarding the law and the methods of which the law is being implemented.

The emotionally disturbed children are virtually not being served in most school systems. Handicapped children find it extremely difficult to be enrolled in vocational or career programs. They encounter discrimination from vocational, shop, industrial arts, and trade programs, mainly becausethe instructors in these areas are poorly trained and reluctant to accept the responsibility for handicapped children in their classes.

Other state agencies that could be utiliz-d by the school systems as resources are not being used as much as they should be. For instance, the Bureau of Rehabilitation was not consulted in the development of the Department of Educations educational plans and referrals to the renabilitation from the school systems are extremely low.

Enclosed is a copy of a complaint to HEW drafted by Pine Tree Legal on behalf of the Maine Coalition for Children with Special Needs and the Human Resource Development Corporation.

We wish we could present statistics documenting our claims, but we have not been successful in obtaining this data from the Department of Education.

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Would you kindly keep us informed of any developments resulting from this hearing.

Respectfully yours,

Richard L. Nadeau,
President

RLN/jke

OFFICE OF CIVIL RIGHTS
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, DISTRICT OF COLUMBIA

Re: Amended Complaint of the Maine Coalition for Children with Special Needs, Inc. and the Human Resources Development Corporation under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794)

1. The Maine Coalition for Children with Special Needs, Inc., and the Human Resources Development Corporation (hereinafter the "Petitioners")are statewide organizations of parents, professionals and friends formed to assure that all children, whatever their special need, receive appropriate and equal educational opportunities.

2. The Petitioners have collected certain information from the State Department of Educational and Cultural Services; the State Department of Human Services, Child and Youth Services Division; the State Department of Mental Health and Corrections; Mental Retardation Services, Project Childfind, and other state and local service agencies; school districts; special education teachers; and parents. Based upon this information, the Petitioners allege that otherwise qualified individuals in Maine are solely by reason of their handicaps excluded from the participation in, are denied the benefits of, and are subjected to discrimination under the Maine Special Education programs which receive Federal financial assistance in violation of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794).

3. Specifically, the Petitioners allege that numerous school age children with various handicapping conditions are now being denied equal access to educational opportunities; are being

excluded from needed educational programs; are receiving minimal or token educational opportunities; and are being placed in inappropriate programs; and that numerous school districts are not complying with the Federally mandated due process requirements incorporated into Section 504 of the Rehabilitation Act.

4. Furthermore, the Petitioners allege that the State of Maine and the Maine Division of Special Education (hereinafter "Division") has aided and abetted the school districts' violations of Section 504. The Division has approved of programs which exclude or provide inappropriate services to handicapped children.

5. The Petitioners offer the following evidence to document its charges:

A. THERE ARE TOO FEW SCHOOL PROGRAMS IN MAINE FOR MANY SPECIAL NEEDS CHILDREN. AS A RESULT, THESE CHILDREN ARE SENT TO INSTITUTIONS, PLACED IN INAPPROPRIATE LOCAL SEGREGATED FACILITIES, COMPLETELY EXCLUDED FROM ANY MEANINGFUL SPECIAL EDUCATION PROGRAM, AND OTHERWISE DENIED EQUAL ACCESS TO EDUCATIONAL PROGRAMS. ALTHOUGH THE PROBLEM AFFECTS ALL CLASSES OF HANDICAPS, APPARENTLY THE MOST SERIOUSLY AFFECTED ARE THE EMOTIONALY DISTURBED, THE MENTALLY RETARDED, AND THE HEARING IMPAIRED

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(1) Special Education statistics (Comprehensive Blueprint) compiled by the Children and Youth Services Planning Project, 6 Waban Street, Augusta, for the academic year 1974-1975 found that only 54% of the number of Maine children estimated to need special education services were receiving them. In several counties no children were receiving special education services for hard of hearing and profoundly mentally retarded, and in several other counties only 1% to

(2)

10% of the total estimated to be in need of special education services were receiving them for the hard of hearing, profoundly mentally retarded, and the emotionally disabled. See statistics attached as Exhibit A. There is no reason to believe that the situation has changed significantly during the present school year.

(2) A comprehensive study was just completed of 40 towns contiguous to SAD #17, at the request of the Superintendents of those towns. Petitioners have been refused a copy of this study. However, on information and belief, it states that numerous school age children are being excluded from special education programs; that none of the towns had services for the emotionally disabled; that there are no services for the EMR at the secondary or intermediate school levels; and that there are no local services for partially hearing impaired. As a result of the lack of local programs, ED and EMR students are inappropriately grouped with other handicapped children in a special classroom, or are mainstreamed, and either fail and/or are socially promoted. The partially hearing impaired are sent to Baxter. (There are 11 partially hearing impaired persons from the region at Baxter). A copy of an April 5, 1978 letter from the superintendent of SAD #17 regarding the study is attached as Exhibit B.

(3) A report resulting from an independent investigation by the Education Committee of the 108th legislature found that although federal special education funds have increased, the percentage of children receiving services as well as the actual number has declined. The report also underscores the local school districts' confusion about the law, the lack of

(3)

any staff and/or qualified staff to instruct special needs children, and the lack of supportive services at the state level from the Department of Special Education.

(4) A special education director in Biddeford recently complained in a written report that the school has only one part-time speech therapist for 78 children and the school is now not meeting the requirements of handicapped children. A copy of a newspaper article about this report is attached as Exhibit C.

EMOTIONALLY DISABLED

(5) There are 4 residential treatment centers for ED children in Maine, and few local ED programs. The institutions serve primarily the mild to moderate category, excluding the moderate to severe category. There are few if any outreach, support or advocacy systems for any ED children. Thus, ED children who are served at all are sent miles away to an institution. Others are in school, but receiving little benefits because of their problem. Still others drop out of school or are expelled as "disciplinary" problems. One child committed suicide apparently because of the lack of attention to her emotional needs. Specific examples of ED school age children denied equal educational opportunities brought to the attention of the Petitioners are attached as Exhibit D.

MENTALLY RETARDED

(6) There are 3 residential treatment centers for MR children in Maine. Although there are more local and regional MR than ED programs, there are still too few programs to meet

the needs of MR students, especially those in the severe and profound category. As a result, numerous MR students are denied any programs and socially promoted, or receive only token educational programs in schools or in a segregated facility (see Infra). Specific examples of MR children denied equal educational opportunities brought to the attention of Petitioners are attached as Exhibit E.

HEARING IMPAIRED

(7) To Petitioners' knowledge there are only three enclosed classrooms in Maine for the hearing impaired. Even these three programs are about to close because of lack of funding or are severely overcrowded. The only available program is a residential facility, Baxter School in Portland, Maine. On information and belief, two hearing impaired children age 6 are still in a pre-school program (University of Maine in Orono) because of the lack of any local program. There does not appear to be any significant movement in Maine to remedy this serious problem, and hundreds of hearing impaired children continue to be denied equal educational opportunities.

B. SPECIAL NEEDS CHILDREN IN MAINE ARE PLACED INAPPROPRIATELY IN SEGREGATED FACILITIES

(8) Rather than integrate special needs children with non-special needs children in the regular classroom under the principle of the least restrictive alternative, special needs children are often placed in segregated facilities. These facilities are often directed by a teacher who has no

qualifications related to each child's particular needs. This policy is apparently condoned and encouraged by the State.

Some examples are:

(a) Camp Waban, North Berwick, Maine. Under the York County Compact (state and federally funded), a school was set up at Camp Waban solely for special needs mentally retarded children. There is no opportunity for these special needs children to participate with non-special needs children at Camp Waban. Apparently the school's policy is to take certain children from the public schools where they were doing well in special education programs, and place them in Camp Waban in violation of the principle of the least restrictive educational alternative. One such child is Rene Hutchinson, and a copy of her federal court complaint challenging this placement is attached as Exhibit F.

(b) Mexico Elementary School, Mexico Maine

14th Street School, Bangor, Maine

Lewiston Jr. High School, Lewiston, Maine

Wilton Jr. High School, Wilton Academy, Wilton, Maine

These are just 4 examples of the many schools throughout the state which, in lieu of providing individualized special education services. place children with varying special needs, including EMR, LD, ED in one ungraded classroom. These self-contained classes are not programs designed to meet the variety of needs of the children in the room. As a result, these children are denied equal access to educational programs.

(c) Vocational Training Centers (e.g. Abilities and Goodwill, Portland, Maine)

Numerous school age children are placed in these facilities, where they receive little or no public school educational opportunities. See e.g. Exhibit E, ¶11.

C. SPECIAL NEEDS CHILDREN IN MAINE ARE DENIED EQUAL ACCESS TO PUBLIC SCHOOL VOCATIONAL PROGRAMS

(9) The Petitioners have uncovered instances where special needs children in public schools are denied equal access to the school's vocational program. For example,

on information and belief, Mount Blue High School, Farmington, Maine has an excellent regional vocational training center where children are taught work skills. Instead of attending this program, some school age MR students are sent to Project Dawn in Farmington for at least half the day. Project Dawn is a day activity center, a holding facility, with no meaningful educational program.

D. SPECIAL NEEDS CHILDREN IN MAINE ARE DENIED THEIR RIGHTS TO DUE PROCESS

(10) Numerous parents have notified Petitioners that their special needs children have not been evaluated, or have been placed in a special education program or deprived or a special education program with notice to them, or without a PET or IEP. See Exhibits D, E, and G.

(11) The school districts have not been given adequate direction in the implementation of the special education due process procedures. To further complicate matters, the Division of Special Education has misinterpreted and misapplied certain basic protections under Federal law. For example, the Division's policy is to treat PET decisions as mere recommendations which the school principle or school board can accept, reject, or modify for reasons totally unrelated to a child's educational plan. This totally circumvents parents' and childrens' due process protections and equal access to educational programs. This policy is set forth in a June 29, 1977 letter from Edward Hinckley to a local school superintendent attached as Exhibit H. See generally, Maine Coalition comments in testimony, attached as Exhibit I.

E. SPECIAL NEEDS CHILDREN IN MAINE ARE DENIED THEIR RIGHTS TO TRANSPORTATION UNDER §84.33 (c)(2) OF THE HEW REGULATIONS

(12) The current travel reimbursement policies put an undue strain upon parents and impedes adequate special education programming. There are no provisions in the regulations for summer transportation to and from various special education facilities. Also, the existing regulations provide that travel to residential schools can be reimbursed only for 7 round trips a year. See testimony, Exhibit I.

F. THERE HAS BEEN A MISUSE OF TITLE I FUNDS IN MAINE

(13) On information and belief some school districts have been using Title I funds to provide special education programs to special needs children. One example is SAD #9 Farmington, Maine.

WHEREFORE, the Petitioners pray that the Office of Civil Rights investigate their complaint, declare that numerous otherwise qualified handicapped school age children in Maine have been and are now solely by reason of their handicaps excluded from participation in, denied the benefits of, and subjected to discrimination under Maine special education programs which receive Federal financial assistance in violation of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794). They further pray that the Office of Civil Rights find the Division has aided and abetted the school districts' violation of Section 504, and order that all appropriate remedial action be taken.

DATED: April 19, 1978

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(9)

King Junior High School
92 Deering Avenue
Portland, Maine 04102
May 15, 1978

Dear Senator Hathaway,

On Saturday, May 13,1978 testimony was offered in Portland regarding reactions to PL 94-142. I am writing in regard to one piece of testimony offered by Marjorie Knight, Reading Consultant, King Junior High School; specifically, one paragraph in her testimony that was a direct quote from me. The paragraph, contained in a handout"General Problems of 'Petting'," is:

> Special Ed. administration and building level administration are not communicating and are leaving the details of fulfilling requirements of PL 94-142 up to Special Ed. teachers. Teachers who are sending students on to high school or junior high must meet with receiving teachers to work jointly on IEP's; Jr. High Special Ed. teachers are caught in the middle, since we have to meet with our feeder schools and the receiving high school; in addition, Cohen's office has made no provision for release time or substitute coverage for special ed. teachers. If we are called to a 9 o'clock meeting at an elementary school to write an IEP, we are left with the responsibility of getting there and getting someone to cover our classes.

It has come to my attention that this paragraph contains inaccuracies and contains mention of a name that should not be included in any public record. I apologize for this oversight and would like to correct it. I formally request that this paragraph, with the exception of the sentence; "Teachers who are sending students on to high school or junior high must meet with receiving teachers to work jointly on IEP's; Jr. high special ed. teachers are caught in the middle, since we have to meet with our feeder schools and the receiving high school," be deleted from the testimony. I hope this will be sufficient to clear the record. Thank you for your attention to this matter.

Sincerely,

Sharon Bresler

Sharon Bresler

cc Dr. Salomo Cohen
Mr. Donald Stokes
Mrs. Marjorie Knight

Senator HATHAWAY. Thank you very much. The hearing is now adjourned.

[Whereupon, at 12:45 p.m., the subcommittee was adjourned.]